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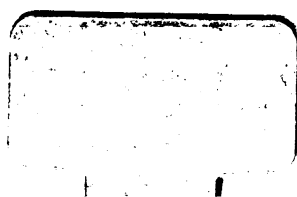
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INVESTIGATION OF ADMINISTRATION OF LOUIS F. POST
ASSISTANT SECRETARY OF LABOR, IN THE MATTER
OF DEPORTATION OF ALIENS

HEARINGS

BEFORE

THE COMMITTEE ON RULES

HOUSE OF REPRESENTATIVES

SIXTY-SIXTH CONGRESS

SECOND SESSION

ON

H. RES. 522



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HOUSE OF REPRESENTATIVES.

SIXTY-SIXTH CONGRESS.

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INVESTIGATION OF ADMINISTRATION OF LOUIS F. POST,
ASSISTANT SECRETARY OF LABOR, IN THE MATTER OF
DEPORTATION OF ALIENS.

COMMITTEE ON RULES,
HOUSE OF REPRESENTATIVES,
Tuesday, April 27, 1920.

The committee this day met, Hon. Philip P. Campbell (chairman) presiding.

The CHAIRMAN. The committee will be in order. House resolution 522 is before the committee. The committee will hear the author of the resolution.

Mr. HOCH. Mr. Chairman, Mr. Johnson, chairman of the Committee on Immigration and Naturalization, I understand, can not well stay very long, and he would like to make a short statement. It is agreeable to me, if it is to the committee, that Mr. Johnson be heard. It is immaterial to me except that I desire to accommodate Mr. Johnson, but as far as I am concerned I am perfectly willing to proceed.

The CHAIRMAN. The committee would like to hear from you on the general scope of what you have, and I assume Mr. Johnson would rather go into some specific matters.

Mr. JOHNSON of Washington. No; it is the other way. I do not propose to cite specific cases, but rather to call attention to the report of a subcommittee of the House Committee on Immigration and Naturalization and to explain same briefly.

Mr. J. H. RALSTON. Mr. Chairman, if it is in order at this time, may I be recognized simply to enter an appearance for Mr. Post, in association with Mr. Charles T. Clayton.

The CHAIRMAN. Do you desire to go on now, Mr. Hoch, or do you desire that we hear Mr. Johnson?

Mr. HOCH. I desire to do what the committee wishes.

The CHAIRMAN. If it is an accommodation to Mr. Johnson we will hear him.

STATEMENT OF HON. ALBERT JOHNSON, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF WASHINGTON.

Mr. JOHNSON of Washington. I wanted to say that I am the author of the resolution under consideration, but I think it is due the Committee on Immigration and Naturalization that a brief statement be presented concerning the work of that committee in connection with deportation inquiries.

The House Committee on Immigration and Naturalization was authorized last November by the House under resolution 379 to hold

sessions in or out of Washington and to make inquiries and investigations that might aid in the preparation of legislation. Following the letter of that House resolution the committee, of which I have the honor to be chairman, has not felt it incumbent upon itself to pursue investigations to the point of making direct charges, although each inquiry of the committee has developed conditions which would warrant individual members in charging officials of the Government with contempt for and disregard of immigration laws.

A subcommittee has just printed a report of its investigations on communist and anarchist deportation cases. In this report is shown the decision made January 24, 1920, by Secretary of Labor Wilson to the effect that alien members of the Communist Party were subject to deportation under the law. The Secretary says:

It does not devolve upon the Secretary of Labor officially to determine whether Congress was wise in creating the law, or the Communist Party wise in creating the facts. It is his duty to apply the law to the facts as he finds them. It is mandatory upon him to take into custody aliens who are members of this organization and deport them in the manner provided for in the immigration act of February 5, 1917.

The report shows, further, that Acting Secretary Abercrombie decided certain Communist cases in accordance with the decision of the Secretary of Labor; that on or about March 6, 1920, Acting Secretary Abercrombie was called away; that the Secretary of Labor was sick and away, and that Assistant Secretary Post resumed the handling of final decisions in deportation cases; that for a time he followed the opinion of the Secretary, notably in the W. T. Colyer case—his decision being printed in these hearings—commenting thereon as follows:

The task of making that decision does not fall upon me—

That is, the Assistant Secretary—

The Secretary to Labor in person having already made it in a case which is identical with the finding of fact as to membership, namely, that the alien is a member of the Communist Party. The Secretary's decision, by which I am bound and with which I agree, was set out in a memorandum in the case of Preis (No. 54709-495). A copy is hereto attached.

This was in March, 1920, but toward the end of that month Assistant Secretary Post changed his mind and rendered a decision in the Blinic case and later in the Truss case, and thereafter he called for cases to be sent in to him at the rate of 10 per day, and still later at the rate of 100 per day, these cases going over the heads of the Commissioner General of Immigration and the law clerks of his bureau, and without having received even the commissioner's signature were ordered canceled by Assistant Secretary Post.

The report also shows a decision by the Assistant Secretary in the Magon case, in which he undertook to define the word "anarchist" and to affirm that Congress could not have used the word as a "verbal brickbat."

In the report will be found the decision of Judge Aldrich in the Boston anarchist cases, wherein that judge decided that Congress having said by law that anarchists should be deported, no leeway was then given as to whether the alien in question was a philosophical or a bomb-throwing anarchist.

The Committee on Immigration and Naturalization has examined many of the papers in alien I. W. W. cases and has ordered these

printed in the form of hearings. Also the committee has examined the cases of several hundred insane and feeble-minded persons admitted into the United States in violation of law, we believe. The papers in certain of these cases also will be printed as hearings. That is to say, the document which you have before you deals with communist and anarchist deportation cases; another document will deal with the so-called alien I. W. W. cases, many of those having occurred more than a year ago; and still another document will deal with the bringing into the United States of insane and feeble-minded persons. In the report before you there is added a digest of the cases deported on the *Buford*.

Mr. GARRETT. The insane and feeble-minded question is not involved in this resolution?

Mr. JOHNSON of Washington. No; but I wanted to explain that the Committee on Immigration and Naturalization, with a view to preparing legislation, had divided these cases into several classes.

I want to say further that the Committee on Immigration and Naturalization, after certain investigations under authority, in line with House resolution 379, reported a bill for the exclusion and expulsion of aliens of anarchistic and similar classes, which was a bill that carried out more in detail the actual designation of aliens who belonged to revolutionary groups that do this, that, and the other thing. That bill, if enacted into law, would largely prevent a situation such as present exists, although there would still be an opportunity to split hairs over what Congress means when it says anarchists shall be deported. The bill which the committee sent to the House was House resolution 11224; it passed the House without a dissenting vote and is now before the Senate. I believe this hearing, among other things, will disclose the necessity for the immediate enactment of that bill into law.

Mr. Chairman, speaking personally and not as chairman of the Immigration Committee, I would like to call the committee's attention to the fact that Judge Anderson, of Boston, has advised the Colyers, who were ordered deported, to "quit butting their heads against the wall" and to keep out of radical socialism for a few months; that the public is seeing red. In my opinion the public is not seeing red without a reason. It is seeing its laws violated by public officials in behalf of aliens who have contempt for this Government, who are here trying to overthrow it, and who in league with similar revolutionists throughout the world, whether they call themselves socialists, Bolsheviks, communists, or anarchists, or whether they contribute dollars to "the cause" or throw bombs for "the cause." Neither these aliens nor their revolutionary notions are needed in the United States, and if necessary Congress should clean out any executive department that encourages these aliens or indorses their ideas. Personally I can not believe that Secretary Wilson knows what sort of boring from within is going on within his department, and I do not believe President Wilson knows of the situation and its dangers.

I thank you, Mr. Chairman, and later I may want to appear before the committee to discuss individual cases that I have personally studied.

The CHAIRMAN. We will now hear Mr. Hoch.

STATEMENT OF HON. HOMER HOCH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS.

Mr. HOCH. Mr. Chairman and gentlemen of the committee, may I say at the outset, as the author of this resolution, that as far as I am concerned there is no political or partisan consideration in it whatever, and at no stage of this proceeding, wherever it may go, will I inject any partisan considerations into the hearings. To my way of seeing this, the issues involved are far above any partisan considerations. There should be only one purpose in connection with this whole matter, and that is to get at the bottom of the facts whatever they are.

Here is the situation. Many hundreds of aliens, taken either in these so-called "raids" or taken in individual arrests over the country under deportation proceedings, have been turned loose. Many of these individual cases were of men who were taken because of their known activities. A number of times it has been charged on the floor of the House that Assistant Secretary of Labor Post, by his attitude toward the law and by his action in specific cases, has virtually nullified the law against alien reds and anarchists. This resolution, as you will note, simply recites these charges, calls for a thorough inquiry into the charges, and if the charges are found to be true, calls for an impeachment resolution.

My own information is based almost solely upon the hearings and findings before the Immigration Committee, which you now have before you. Having personally examined these hearings and findings carefully, I am absolutely convinced that the public interest demands this investigation and that there must be a showdown in a situation which has become intolerable.

Now, I do not want to worry the committee, and yet, appreciating the seriousness and the importance of this matter, I have prepared a statement, thinking it might expedite the hearing. Some of the preliminary things I shall say I realize are known to you as members of the committee, but for the sake of the record and for the purpose of laying a foundation I think it wise to incorporate them. Of course, I would be glad to be interrupted at any point in my reading of this statement.

In the first place it is necessary to get clearly in mind the provisions of the law of October 16, 1918, which have a bearing on this matter. The act provides for the exclusion of various classes of aliens, among which are the following:

(1) Anarchists. The word "anarchists" is simply used without any qualifications.

(2) Aliens who advocate the overthrow of the Government of the United States by force and violence.

(3) Aliens who teach the unlawful destruction of property.

(4) Here I quote the exact language of the statute, and you will see as we go along how material this is:

Aliens who are members of or affiliated with any organization that entertains a belief in, teaches, or advocates the overthrow by force or violence the Government of the United States, or of all forms of law, or that entertains or teaches disbelief in or opposition to all organized government.

(5) Aliens advocating the unlawful assaulting or killing of public officers.

Section 2 of the act then provides that any alien belonging to any of these classes who has gotten into the country is unlawfully within the country and "shall upon the warrant of the Secretary of Labor be taken into custody and deported." Deportation is to take place no matter when it was that the alien entered the United States. I ask you to bear that fact in mind, under this law of 1918.

Under the law, deportation of aliens is solely under the jurisdiction of the Department of Labor and seems to have been administered almost entirely, if not entirely, by the Assistant Secretary, Mr. Post.

Within the past year, and largely within recent months, many hundreds of aliens have been arrested by the Department of Justice and held as being subject to deportation. Hundreds of these aliens were arrested in the course of so-called raids in various parts of the country, but a large number of them have been apprehended as individual cases, entirely aside from any "raids."

In hundreds of these cases, after the examining inspector and commissioner, or inspector in charge of the district where the cases originated, the labor bureau's law division and the Commissioner General of Immigration, Mr. Caminetti, had recommended deportation in very strong terms, warrants were canceled by Mr. Post and the alien released. A long but only partial list of these cases will be found in the hearings of the Immigration Committee.

It is stated in the hearings that—

The Assistant Secretary must have reached the conclusion that the aliens were not being released fast enough, as he proceeded to order the release of, and the cancellation of the warrants, in some 38 cases in which the records of hearings had not reached the bureau or department, and in most of which no hearing whatsoever had at that time been accorded to the alien. This order for canceling the warrants was signed by wire in code.

It is still further stated in the hearings:

It is not clear how the Assistant Secretary or any other person having the interests of the United States Government at heart could issue an order by wire canceling the warrants in the cases of 38 aliens arrested as anarchists without awaiting the record of hearing in order to determine the nature of the evidence adduced to support the original charge.

A list of these cases, with full numbers, will be found in the committee hearings.

Many of the cases involve the question of membership in the Communist Party of America. I might digress here to say that there is a Communist Party of America and a Communist Labor Party. With reference to the Communist Labor Party I understand a decision has not yet been reached as to whether members of that party are deportable under that class of cases where it is held that membership in an organization that "teaches or advocates the overthrow by force or violence the Government of the United States, or of all forms of law, or that entertains or teaches disbelief in or opposition to all organized government" makes a man deportable; but with reference to the Communist Party of America the Secretary of Labor has held that the Communist Party clearly comes within the class of these organizations "that entertain a belief in, teach, or advocate the overthrow by force or violence of the Government of the United States, or of all forms of law." The Secretary went into this question fully in the case of Englebert Preis

and shows conclusively that the Communist Party of America seeks the overthrow of the United States Government by force and violence.

Every applicant for membership signs an application card stating that he has "read the constitution and program of the Communist Party, declares his adherence to the purpose and tactics of the party and the Communist Internationale; agrees to submit to the discipline of the party as stated in its constitution and pledges himself to engage actively in its work." The manifesto and program set out by the Communist Internationale which met in Russia, and of which the Communist Party of America is a part, shows clearly that it is aimed at the United States as well as other countries, for many specific references to the United States are made therein. I think at least seven specific references to the United States are made in the manifesto of the Third Internationale. Secretary Wilson says of this Communist Party—and I am now quoting from Secretary Wilson—"strikes are to be broadened and deepened, making them general, and militant efforts made to develop their revolutionary implications. The strike is to be used not simply to secure redress of economic wrongs, but as a means through which the Government may be conquered and destroyed." The following quotations from the program set out by the Communist Party are typical of its literature:

The Communist Party shall participate in mass strikes not only to achieve the immediate purpose of the strike but to develop the revolutionary implications of the mass strikes.

The revolutionary era compels the proletariat to make use of the means of battle which will concentrate its entire energies, namely, mass action with its logical resultant, direct conflict with the governmental machinery in open combat.

The evidence of a widespread propaganda and a careful and well-organized plan to put this program into action throughout the United States is plain and overwhelming to anyone who will read any considerable number of the cases.

Membership in the Communist Party of America being shown, there is no discretion on the part of the Department of Labor—deportation must follow under the law. Whether the law is a wise one or not is not here at issue. May I read that again? Membership in the Communist Party of America being shown, there is no discretion on the part of the Department of Labor—deportation must follow under the law. Whether the law is a wise one or not is not here at issue.

Mr. POUL. Are you now quoting?

Mr. HOCH. No; I am simply making a statement.

Mr. POUL. That is your own conclusion?

Mr. HOCH. That is my conclusion; yes. I think, however, that Secretary Wilson states the same thing in his decision in the Preis case. There is no longer any question in the department, membership clearly having been shown in the Communist Party, that deportation must follow, although there is some difference of interpretation as to when membership is shown.

Mr. VAILE. Let me quote from the Secretary's letter in the Preis case as bearing out that very point. He says:

It does not devolve upon the Secretary of Labor officially to determine whether Congress was wise in creating the law or the Communist Party wise

in creating the facts. It is his duty to apply the law to the facts as he finds them. It is mandatory upon him to take into custody aliens who are members of this organization and deport them in the manner provided for in the immigration act of February 5, 1917.

Mr. POW. The question, then, would seem to be a question of fact as to whether or not they are members of that organization?

Mr. VAILE. Yes, sir.

Mr. HOCH. A few illustrative cases may now be cited.

Gabriel Bushkoff, a Russian, entered at Philadelphia, 1914, arrested January 12, 1920, under warrant alleging that he is in the United States in violation of the act of October 16, 1918. Following are extracts from the review of the case submitted on April 6, 1920, by Mr. Caminetti, commissioner general, to Mr. Post:

Hearing was accorded at Ellis Island, N. Y., on March 22, 1920, the alien being represented by counsel. The alien declined to answer all material questions. The record shows that he declined to deny that the warrant charges are true. Exhibit C, in the record, is a statement made by the alien before an agent of the Department of Justice, three other Government officials being present, on January 6, 1920. In that statement he admitted that he is a member of the Communist Party, First Russian Branch; that he joined when the party was established; that he is familiar with the by-laws of the Communist Party; that he believes in the overthrow of any government by force or violence; that he believes in killing public officials, and that he believes in revolution.

The examining officer and the acting commissioner at Ellis Island recommended deportation.

The evidence submitted and adduced established, and the bureau finds, that this alien is in the United States in violation of law (act of October 16, 1918), and is subject to deportation therefor, this on the ground, and it is so found, that he is a member of or affiliated with an organization that advocates, teaches, or entertains a belief in the overthrow by force or violence of the Government of the United States; and that he is a member of or affiliated with an organization that advocates the overthrow by force or violence of all forms of law.

It is, therefore, recommended that the department issue its warrant for his deportation, on these grounds, such deportation to be to Russia at Government expense.

A. CAMINETTI,
Commissioner General.

When the case was submitted to Mr. Post, he simply marked on the bottom, "Canceled, Louis F. Post, Assistant Secretary," and the alien was released.

Enrique Magon is a Mexican revolutionist who came to this country 16 years ago. In Mexico he had been a very radical revolutionist, advocating the destruction of property, the confiscation of all lands, factories, railroads, etc. He was against "government, capital, clergy" and published literature in which it was claimed that his Mexican party "Is the only one on earth that with ideas and action is working for the emancipation of the poor." He sought to upturn government by force and violence. He was clearly not entitled to admission to this country. There can be no question as to that, under the terms of the law of October 16, 1918, and under the terms of that law he is unlawfully within the United States, and under section 2, must be deported. There is no discretion provided in a case such as his.

After coming to this country he edited a paper called *Regeneration* in San Antonio, St. Louis, and finally in Los Angeles. He was one of a party of revolutionists who kept up their propaganda and circulated their literature in this country. He and his brother, Ricardo Magon, assisted by their wives, published this paper and published a lot of

other revolutionary literature. He testified that he and his brother and the group working with him all had the same ideas as to government. The following is a quotation from a pamphlet published and circulated in this country by the brother, Ricardo Magon, and read by the groups of which Enrique Magon was one of the moving spirits:

GOVERNMENT OR ANARCHY.

BROTHER LABORERS: Be convinced once for all that humanity is divided into two social classes—that of the workers, who produce all useful things, and that of the exploiters, who are those declaring themselves owners of land and all that comes from the hands of the workers. The interests of these two classes are antagonistic; there is no conciliation, because what benefits one of them injures the other, and for this reason there must exist between the two social classes a war to the death until the exploiting class—capitalists, bourgeois, proprietors, parasites, or whatever name you care to call them—disappear, and together with them will disappear the institution called government, that only exists to help the exploiting class, and the institution, church, that has for its object the keeping in submission and obedience of the masses that they may not rebel against the rich and government.

In order to do away with the exploiting class it is only necessary to ignore the so-called property right and take possession for the community. This done, both government and church will disappear, as they will have no mission to perform. Then will anarchy have triumphed. * * *

Choose, brothers: Government or anarchy? If you are for anarchy, adopt the principles announced in manifesto of September 23, 1911, by Organizing Body of the Liberal Party of Mexico.

Enrique Magon was sentenced to the penitentiary in California for sending improper matter through the mails. His examination for deportation was held at Fort Leavenworth, where he has been confined, on March 18, 1920. He testified freely, and stated frankly that he was an anarchist. Being pressed, he described himself as a "communist anarchist." The immigrant inspector who conducted the examination recommended deportation in the very strongest terms.

On April 12, 1920, Mr. Caminetti, Commissioner General of Immigration, reviewed the case at length for the Assistant Secretary of Labor. From that review, submitted to Mr. Post by Mr. Caminetti, are taken the following quotations:

The alien is admittedly an anarchist and the record throughout conclusively proves this to be so. The alien indicates that he will not fight deportation, but objects strenuously to being sent to Mexico, saying that he surely will be shot if placed across the border of that country, and for this reason he hopes that if he must be deported that he and his family will be sent to Soviet Russia.

The examining officer and the inspector in charge at St. Louis recommend deportation.

The evidence submitted and adduced establishes, and the bureau finds, that this alien is in the United States in violation of law, and is subject to deportation therefor, this on the ground, and it is so found, that he is an alien anarchist; that he believes in the overthrow by force and violence of the Government of the United States; that he believes in the overthrow by force and violence of all forms of law; * * * that he disbelieves in all organized government; that he teaches the assassination of public officials, and that he teaches the unlawful destruction of property.

It is therefore recommended that the department issue its warrant for his deportation on these grounds, such deportation to be to Mexico at Government expense, such deportation to become effective at the termination of his present sentence at Fort Leavenworth, Kans.

A. CAMINETTI, *Commissioner General.*

On April 14, 1920, Mr. Post, Assistant Secretary of Labor, reviewed the case, and divided the charges against the defendant into two classes, one that he belonged to an organization membership in which would make him deportable under the acts of 1917 or 1918, and the other that he is an anarchist and therefore must be deported under the act of 1918. The first charge he disposes of on the ground that the Mexican Liberal Party does not come within the proscribed clauses as it appears to be an organization designed merely to revolutionize political and industrial conditions in Mexico. He then takes up the charge that Magon is an anarchist, and from his comment and findings the following are quotations:

The only remaining charge is that alien is an anarchist. In his testimony he calls himself an anarchist. If, then, the word anarchist as a mere word, regardless of its meaning or the alien's meaning in using it, is to determine the case the alien must be deported.

But Congress can not have used the word "anarchist" as a "verbal brickbat" after one of the verbal fashions of the time. It must have meant something by which the word could be expanded into one or more definite significations. * * * Anarchism is the name of a movement which originated with Pierre Proudhon, about the middle of the last century. Proudhon's anarchism predicated social order upon the self-control of free individuals without governmental force. He asserted the extreme of an old American doctrine which is not yet forgotten, that "the best government is a government which governs least." Out of Proudhon's anarchistic or nongovernment philosophy there sprang two principal schools of anarchism, the pacific and the militant, each with a variety of factions. The militant school is terroristic, its slogan "propaganda by deed." Its method and its activities in different parts of the world have doubtless given to the word "anarchism" that sinister significance which attaches to it in its uses as a vulgar epithet.

Mr. Post then holds that Magon belongs to neither of these two classes of anarchists, and he picks out from all the testimony the most favorable sentences to be found, disregarding all the others, and says:

He [Magon] describes his ideal of government as follows: "Organization of the individuals in their several works; from there to every town; from every town to every region; from every region to what we call now national organization to form a kind of republic." He would have "each country to follow the sentiments of the majority of its inhabitants."

In other words, he favors the American theory of peaceable government by the majority. (!) * * *

The warrant is canceled.

LOUIS F. POST, *Assistant Secretary.*

Other individual cases will be presented by others.

Mr. RODENBERG. That is still subject to review by the Secretary of Labor. He is certainly supreme in that department, and Secretary Wilson, entertaining the view he does, that membership in the Communist Party of America constitutes a cause for deportation, why did he not carry out his views and deport these men? This is the first instance I ever knew where an Assistant Secretary seems to have more authority than the Secretary.

Mr. HOCH. I am simply giving what the record shows.

Mr. RODENBERG. Were not those cases reviewed by the Secretary?

Mr. HOCH. They seem not to have been.

Mr. SIEGEL. The Secretary never reviews these immigration cases. The acting secretary—usually Mr. Post or Mr. Abercrombie—passes on all immigration cases and he is the Secretary as far as immigration cases are concerned.

Mr. HOCH. As I said in my general statement, it seems from the record that in practically all of the cases deportation matters seem to have been left entirely to Mr. Post.

Mr. RALSTON. May I interrupt to make this observation? A letter from Mr. Caminetti has been read. I think the committee ought to listen to that reading and the reading of anything further from Mr. Caminetti with the idea in mind—which I believe to be entirely correct—that Mr. Caminetti's recommendations or opinions have no possible legal weight or effect whatever; he is not charged with the duty of approving or disapproving the deportation of any men; that rests with the Secretary, and under certain circumstances with the Assistant Secretary, but not with Mr. Caminetti, so that his opinion is mere waste paper.

Mr. RODENBERG. What I wanted to do was to try to fix responsibility for failure to enforce the law. With whom does that rest? The Secretary of Labor is certainly supreme in his department and any action on the part of the Assistant Secretary is subject to review by the Secretary.

The CHAIRMAN. I assume that in the absence of action by the Secretary the action of the Assistant Secretary is final so far as that office is concerned?

Mr. HOCH. As a matter of fact it was final in these cases.

Mr. RALSTON. The point I want to make is that Mr. Caminetti, as far as expressing an opinion as to the deportation or nondeportation of a man, is acting entirely outside of the law or power conferred upon him.

Mr. JOHNSON of Washington. It ought to be stated that in reading the copies which are presented here your committee is likely to have some difficulty in deciding whether the papers were actually signed or just left blank, although the words "Commissioner General of Immigration" and the words "Assistant Secretary" are there. The procedure down there has been that a law clerk reviews the reports that are sent in from a station in regard to an alien; those reviews having been made, they go forward to the Secretary as a recommendation signed by Mr. Caminetti as commissioner general. You will also note in examining these paper that the Assistant Secretary of Labor, Mr. Post, always signs himself as such; Mr. Abercrombie, however, who, I believe, is the solicitor of the department, when he is acting signs himself as Acting Secretary, but we find that Assistant Secretary Post always signs himself as such, even though he is Acting Secretary when the Secretary himself is out of the city.

Mr. JOHNSON of South Dakota. The fact nevertheless remains that the Secretary of Labor could have reversed these cases at any time he desired to do so.

Mr. RODENBERG. When there is such a difference of opinion in the application of the law as there is between the Secretary and the Assistant Secretary it seems to me that the Secretary, in order to protect his own department, should have at least reviewed these cases or insisted that they should be handled directly by him instead of by the Assistant Secretary, for the Secretary is on record as holding that membership in the Communist Party constitutes a cause for deportation.

Mr. JOHNSON of Washington. The record shows that these cases hobbled up in great numbers in a very few weeks, in fact, in a very few days after the decision by the Secretary, and were handled in increasing numbers up to and on past April 1.

Mr. HOCH. I am only giving the record and showing what was actually done. I shall not digress to answer any contention that Mr. Post's counsel makes as to whether the statements of Mr. Caminetti are so much "waste paper." I am calling attention to these papers which passed through this regular channel, where the examiner and the inspector in charge made a review of the cases, which finally came here, and were reviewed by Mr. Caminetti, and then sent on with his findings in those cases to Mr. Post, and showing that that was the course followed and that Mr. Post did cancel those warrants. That is all I am concerned with in showing these records.

Mr. JOHNSON of South Dakota. If the Secretary of Labor still agrees with his previous opinion, he could order the deportation of these men to-morrow morning.

Mr. HOCH. I do not think there is any question that the Secretary of Labor has final authority under the law.

Mr. JOHNSON of South Dakota. He must believe that they must be allowed to live in this country or he is not living up to his convictions.

Mr. HOCH. It is not impossible that he has turned over the administration of this work to Mr. Post and has relied upon his findings. I do not know at all as to that.

Mr. TINCHER. Is it not apparent, from an examination of the cases, that that is what has happened, that Secretary Wilson, outside of rendering that opinion, has not approved of the details of any cases?

Mr. JOHNSON of South Dakota. Is that any reason why he should pass the buck to Mr. Post and not assume the responsibility himself?

Mr. HOCH. I am not in any sense attempting to answer for his attitude.

The CHAIRMAN. I suggest we go on with these facts and then we can later assess the liability.

Mr. HOCH. It appears that many aliens arrested for deportation have been released without bond pending hearing, sometimes upon the recognizance of their attorneys and sometimes upon their own personal recognizance. What the practice of the department hitherto in this regard has been I do not know, but under the laws of 1917 and 1918, under which the department is now operating, I find no authority for release without bond.

The department files disclose that on March 12, 1920, a law clerk in the Labor Department submitted an opinion to the effect that under certain conditions there might be release without bond. This opinion was approved by the department on April 16, the day after the introduction of this resolution.

Now, as to whether the law should provide for release without bond in certain cases, that is another matter. That is a matter for which Congress and not the department has responsibility.

The law of 1917, provides that:

Pending the final disposal of the case of any alien so taken into custody, he may be released under a bond in the penalty of not less than \$500, etc.

From this language the law clerk draws the remarkable conclusion that the words "may be released under bond" do not signify that he may not be released without bond! Such a construction would nullify many, if not most, of the bond provisions in the criminal statutes of the country. The phrase used is the usual one. When statutes provide that defendants may be released upon the filing of an acceptable bond in a sum not less than a stated amount they mean of course to prescribe the conditions upon which release may be had. Otherwise the provision as to the minimum amount of the bond would not mean anything.

But even under the opinion of the department's law clerk, release without bond can only be given under certain conditions. Here is the way the opinion reads:

It is believed that where a bond can not be furnished the release of an alien under any arrangement which the Secretary may think best is fairly within his authority, provided the proceedings relating to hearing and deportation can not be brought to a determination within a reasonable time or that the health of the alien or the humanities involved in his case are such as to make his temporary release a matter of primary importance.

Now, among the many cases where aliens were released without bond take the case of Martens, the so-called ambassador from Soviet Russia. My information is that he was released without bond, upon the recognizance of his attorney. Does he come within the class of those "where bond can not be furnished?" The testimony is that Martens has been maintaining an office in New York, that he has a large staff of helpers, and that he has been carrying on a widespread propaganda. He seems to have had ample funds at his disposal. For further information concerning Martens reference is made to the report of the Senate committee which investigated his case, which report is a severe arraignment of his activities and calls for inquiry and action by the Department of Justice. The inquiry proposed in this investigation will reveal to what extent the plain provision of the law has been waived in cases of this sort.

In many cases the bond has been placed at a low figure over the earnest protest of the Department of Justice. In this class may be cited the case of Paul Bosco. Paul Bosco was convicted in the United States District Court at Martinsburg, W. Va., about two years ago, for a violation of the espionage law, and was sentenced to 10 years in the penitentiary. His sentence was subsequently commuted to two years.

Mr. RODENBERG. Who commuted his sentence?

Mr. HOCH. It was commuted by the President; I think the President has sole authority to commute. Upon learning of this commutation the United States attorney addressed a letter to Mr. Palmer, Attorney General, calling attention to the case and urging that steps be taken to deport Bosco immediately upon the expiration of his sentence. From the United States attorney's letter to Mr. Palmer I quote as follows:

At the time of his sentence, as reported in my letter of February 27 last, he defiantly in the crowded court room announced to the court that he hoped that when he would be released from the Atlanta penitentiary he would find the red flag waving over the American flag.

I have no question about his anarchistic tendencies, and his open defiance was illustrated in court.

Just before the expiration of the sentence, Bosco was given a hearing at the penitentiary, and the following is from his testimony:

Q. When your sentence and term in penitentiary for 10 years was announced in the crowded court at Parkersburg, did you not state defiantly that you hoped that when you were released from the penitentiary that you would find the red flag waving over the American flag?—A. Yes; I said that.

Q. Do you still hope that?—A. Yes.

As a result of this hearing the examining inspector urged deportation and referred to the "positive proof that he is an anarchist of the worst type." Bosco was sent to New Orleans to be held for deportation, and then various attorneys began writing and wiring in his behalf, his latest lawyer being a man by the name of Harry Weinberger, of New York. In one of his letters to the bureau, under date of March 3, 1920, he said, "I want to make certain requests in this case, and you may even consider them demands."

The CHAIRMAN. To whom was that letter addressed?

Mr. HOCH. To Mr. Post, I think. I want to be accurate about that, and possibly it was addressed to the bureau, but you will find that in this printed report. I know he did frequently wire to Mr. Post and send letters to Mr. Post, but as to that particular one, I am not sure. After many insistent telegrams from Weinberger, a letter was prepared by the Bureau of Immigration for the signature of Mr. Post, from which the following is quoted:

You are advised that the department, after a careful review of the facts in his case, is unable to grant your request for his release under bond in the sum of \$1,000. In view of the acts of Bosco leading up to his conviction and prison sentence of two years ago, and his general dangerous character, the department can not consider his release under bond in a sum less than \$5,000.

Instead of signing the letter, Mr. Post wrote across the bottom:

Application of alien's attorney in letter of March 26, 1920, for reopening, transfer of hearing to Ellis Island, and release on \$1,000 bail is granted.

LOUIS F. POST, *Assistant Secretary.*

And then at Mr. Post's direction another letter was prepared for his signature, to Mr. Weinberger, as follows:

Referring further to the case of Paul Bosco, now detained at New Orleans, La., awaiting deportation, you are advised that your demand contained in letter of March 2, 1920, that this alien be released upon bond in the sum of \$1,000, is hereby granted. You are also advised that in compliance with your other demands alien is to be transferred from New Orleans to New York at an early date, and that upon arrival at the latter city the case will be reopened and you will have an opportunity to fully represent your client.

Thus Mr. Bosco is transferred at Government expense from New Orleans to Ellis Island for hearing there and release on \$1,000 bond.

The strained relations between Mr. Caminetti, Commissioner General of Immigration, and his superior, Mr. Post, growing out of their divergent attitudes toward the law and the cases, plainly appears from the examination of the records submitted in the hearings by the Immigration Committee. The following correspondence is cited as illustrative:

DEPARTMENT OF LABOR,
OFFICE OF THE ASSISTANT SECRETARY,
Washington, March 27, 1920.

For: The Commissioner General of Immigration.

From: Assistant Secretary.

Subject: In re parole of aliens, No. 54844-190.

Your appeal to the Secretary by memorandum of March 26, 1920, from decision of the Assistant Secretary in re Communist Labor Party cases, made in his memorandum of March 24, has been noted and transmitted to the Secretary.

Pending decision thereon by the Secretary, you are hereby directed to execute the directions of the Assistant Secretary's memorandum of March 24, which require (1) instructions to inspectors in charge to parole to counsel aliens who are under arrest upon the charge of being members of the Communist Labor Party, if the inspector in charge knows counsel for the alien to be of good standing and reputation; (2) in cases in which parole to counsel can not be effected, but the inspector in charge is satisfied that the alien will appear when wanted, instructions to release upon the alien's own parole; (3) the foregoing directions not to apply to arrested aliens not now in custody; (4) instructions to inspectors in charge to transmit, not later than March 31, the names of aliens in their custody who come within the above classifications, but in whose cases such procedure is undesirable, stating in each case the reason why it is undesirable; (5) transmission to the department of the report of disposition of cases referred to above. Copy attached.

LOUIS F. POST, *Assistant Secretary*.

Noted. C.

MARCH 31, 1920.

Memorandum for the Assistant Secretary.

Your memorandum of the 27th instant, in re parole of aliens, I am informed, was received in the bureau after office hours on the 29th, and having by some one been attached to file No. 54844-190, was not found immediately, as I was looking for it elsewhere than in a Communist Party file. The bureau notes that the appeal has been sent to the Secretary, but since you are proceeding with the subject of said appeal as though it had not been taken, the bureau does not care to bother the Secretary with taking up a matter upon which you propose to act, notwithstanding the appeal was taken by the bureau as provided by the memorandum of the Secretary of January 7, 1916. Therefore the bureau respectfully withdraws the appeal heretofore entered herein.

A. CAMINETTI, *Commissioner General*.

Mr. Johnson, chairman of the Immigration Committee, and others are to be heard, and I do not wish to trespass further upon the time of the committee.

But may I say just a word or two, of a general nature, in conclusion?

There is no doubt that there exists a widespread and carefully planned effort to Russianize this country—to overthrow the Government by force and violence. The movement is not only against orderly government, but is against the institution of marriage, the church, religion, and all the establishments of civilization. The matter of attitude, therefore, toward the law against alien anarchists and toward the whole situation is of vital concern in our national life.

On the one hand the right of free speech, free press, free assemblage must not be abridged, and every man must have an absolutely fair deal. These rights, however, do not mean license to incite to violence, to overthrow and destroy. It has been a glory of America that we welcome to our shores those of other lands who come with high purpose. But there is no room in this country for aliens who come, not to become responsible citizens, but to poison the public thought against our institutions and to preach violence against our Government and its officials. They are getting off easy by simply being sent home.

Gentlemen of the committee, I thank you for your patient hearing.

Mr. VAILE. I was not going to review these cases, but a remark made a few minutes ago regarding the functions of the commissioner general led me to again look at the statute regarding that officer. The statement was made by the gentleman representing Mr. Post that

Mr. Caminetti has no authority in these cases and that his recommendations are to be valued only as waste paper. I would like to direct the attention of the committee to the statutes, the act of March 3, 1891, prescribing the duties of the officer then called the Superintendent of Immigration; that officer was afterwards made Commissioner General of Immigration, whereas, under the statute from which I am about to quote, he was an officer of the Treasury Department, but he was afterwards transferred to the Department of Labor, so that this statute applies to the officer now known as the Commissioner General of Immigration:

The Superintendent of Immigration shall be an officer in the Treasury Department, under the control and supervision of the Secretary of the Treasury [now the Secretary of Labor] to whom he shall make annual reports in writing of the transactions of his office, together with such special reports, in writing, as the Secretary of the Treasury shall require.

So that he is authorized to make reports as required by the Secretary. Now, then, in section 22 of the act of February 20, 1907, chapter 1134, it is provided:

The Commissioner General of Immigration, in addition to such other duties as may by law be assigned to him, shall, under the direction of the Secretary of Commerce and Labor, have charge of the administration of all laws relating to the immigration of aliens into the United States, and shall have the control, direction, and supervision of all officers, clerks, and employees appointed thereunder.

That includes, of course, the immigration inspectors. So that he is chief of the immigration inspectors, the officers who make the first examination of the aliens. He, in other words, is the head of the bureau composed of officers who attend in the first instance to examining the alien, offering him an opportunity for his defense against deportation, and superintending the submission of proof.

In section 1 of chapter 791 of the act of June 6, 1900, it provides:

* * * and hereafter the Commissioner General of Immigration, in addition to his other duties, shall have charge of the administration of the Chinese exclusion law and of the various acts regulating immigration into the United States, its Territories, and the District of Columbia, under the supervision and direction of the Secretary of the Treasury.

So that under the supervision, of the Secretary of the Treasury, now Secretary of Labor, he has charge of the general administration of all laws governing the admission of immigrants into the United States. And I submit the law relating to deportation of aliens is part of the general law relating to their admission; and, at least, this officer, until he is removed by the Secretary of Labor, is presumptively discharging his duties in making recommendations in deportation cases.

The CHAIRMAN. Are not the reports made by the agents of the Bureau of Immigration with respect to these aliens made direct to Mr. Caminetti?

Mr. VAILE. I so understand.

The CHAIRMAN. And Mr. Caminetti reviews those cases and makes his recommendations and refers them to the Secretary?

Mr. VAILE. I so understand.

The CHAIRMAN. What is the first information the Secretary gets with respect to the alien?

Mr. VAILE. In practice from the commissioner general's recommendations or reports.

The CHAIRMAN. Mr. Caminetti?

Mr. VAILE. Yes. I suppose the Secretary or the Assistant Secretary could, if he chose, skip the stage of the Commissioner General of Immigration, except to hear what the Commissioner General of Immigration recommends they shall do.

Mr. CLAYTON. If I may interrupt, the assistant secretary, Mr. Chairman, in the Department of Labor, has an office that is in a way unique. There is not another assistant secretary in any department, so far as I know, who is given the kind of authority that is given the assistant secretary of labor. In all the other departments the assistant secretary is given defined powers.

The CHAIRMAN. Does the law give him the right to override the laws that have been passed by Congress?

Mr. CLAYTON. We do not contend so, Mr. Chairman.

The CHAIRMAN. Let me ask you—I want to get some information here with respect to this matter before we get away from it: What source of information does the assistant secretary have in respect to the facts in the cases that have been referred to him?

Mr. CLAYTON. In the first place, the assistant secretary's powers are defined in the second section of the act creating the Department of Labor, and that reads:

He shall perform such duties as shall be prescribed by the Secretary or required by law.

There has never been any amendment to that and no duties have been imposed on the Assistant Secretary of Labor by law. His powers are such powers as delegated to him by the Secretary.

The second point is what the Commissioner General of Immigration has to do. Now, the statute under which the Bureau of Immigration works is the result of many amendments. It began years ago, I think, in the Treasury Department when the Commissioner General of Immigration was known as Superintendent of Immigration, who then had all the powers that the bureau exercised and he was, in the beginning, the court of first and final instance. But as time went on, and that bureau was transferred first to the Department of Commerce and Labor and then to the Department of Labor, when the Department of Labor was created, his powers were successively limited until, in the last act, he was made simply the conduit, the chief officer of the field force, through whom the information as to such cases as involved possible exclusion or expulsion came up to the department. He is given no authority anywhere in the law to review the cases, but simply to act as the filing officer and to administer the administrative portions of the law. There is not any authority given him any place in the act. I subscribe to that after an analysis of the act.

The CHAIRMAN. Is there any other source through which the assistant secretary could have gotten information upon which he peremptorily canceled orders for deportation as has been instanced?

Mr. CLAYTON. There is the record there.

The CHAIRMAN. Is there any other way except through Mr. Caminetti by which this information could have reached him?

Mr. CLAYTON. Mr. Caminetti transmits the whole record coming up from the port or wherever the alien has been arrested. That record

covers the statement of the facts at the time of the arrest and such preliminary facts as founded the warrant and the arrest following that, the hearing on the arrest, and the recommendation of the officer at the port, all of which is provided for in the law. That comes up to Mr. Caminetti. When it reaches the bureau here and comes to Mr. Caminetti, his duty is simply to collect the facts together, that is, the papers that come up, and to attach them in a file and transmit them to the Assistant Secretary of Labor, who has been designated by the Secretary to act for him in all those matters, and who has been doing so ever since the department has been created.

The CHAIRMAN. Under whom does the Commissioner General of Immigration act—who is his superior?

Mr. CLAYTON. The Secretary of Labor.

The CHAIRMAN. And in the absence of the Secretary of Labor the Assistant Secretary?

Mr. CLAYTON. The Assistant Secretary acts all the time in immigration matters.

The CHAIRMAN. Has the Commissioner of Immigration ever been directed to make no findings in these cases, but merely to send the record to the Secretary as it comes to him without a review or recommendation?

Mr. CLAYTON. So far as I know, speaking as a matter of historic fact, I do not think so. What has actually happened has been there has been an abstract of the testimony put on the top of the file for the convenience of the reviewing officer. These papers submitted in the hearings here are simply abstracts themselves, and whether those abstracts are correct or not no one can tell until the testimony in the case below that has been compared, and there are very frequently differences between the abstract and the testimony in the case.

Mr. RODENBERG. You stated no authority had been conferred upon the Assistant Secretary by law?

Mr. CLAYTON. No specific authority.

Mr. RODENBERG. No specific authority. It is delegated by the Secretary himself?

Mr. CLAYTON. Yes, sir.

Mr. RODENBERG. So it follows, naturally, the Secretary can always review any of the work of the Assistant Secretary?

Mr. CLAYTON. And that is done on occasions.

Mr. RODENBERG. Then, if the Secretary was sincere in the statements he set forth in the Pries case, and if he meant what he said—and I do not want to question that he did—it must follow that the Assistant Secretary and the Secretary are not in harmony in these deportation cases?

Mr. CLAYTON. I do not think it follows, sir, because you are basing your judgment, in the first place, upon an abstract furnished without warrant of law in another case. That abstract may not have been in consonance with the facts in the papers underneath the abstract.

Mr. RODENBERG. No, Mr. Hoch cited several cases showing the warrants for deportation of members of the Communist Party had been canceled by the Assistant Secretary, notwithstanding in the Pries case the Secretary specifically stated that membership in that party was in itself sufficient cause for deportation.

Mr. CLAYTON. Bona fide membership.

Mr. RODENBERG. If that was true, it seems to me if I was Secretary of Labor and my views were not to prevail in my department I would either resign or see that a new Assistant Secretary was put in there.

Mr. HOCH. Counsel for Mr. Post now contends that Mr. Caminetti had no authority whatever to review the facts in these cases, and yet the fact is that all of these hundreds of cases went up to Mr. Post on a finding of facts by Mr. Caminetti and Mr. Post's action was taken almost invariably, if not invariably, upon the very papers upon which those findings were had. And yet the contention is now made that Mr. Caminetti had no authority to make those findings. It is an unthinkable situation.

Mr. SIEGEL. Except in the 38 cases where he acted without having any authority at all to cancel the warrants.

Mr. HOCH. It is a strange situation that he acted upon findings which it is now said Mr. Caminetti had no right to make and yet he permitted him to make during all these months.

Mr. RALSTON. I presume violations of law or departures from law may exist for a time in departmental practice; but that does not establish their legal foundation.

The CHAIRMAN. Mr. Ralston, is it your contention that Mr. Caminetti acted in violation of law when he reviewed the evidence in these cases and made findings of fact thereon and sent them to the Secretary?

Mr. RALSTON. I would not use that language, Mr. Chairman. Violation of law is one thing; without legal direction or authority, of course, is another thing. Our contention is there is no legal direction or authority attendant upon the recommendations of Mr. Caminetti.

The CHAIRMAN. In the absence of Mr. Post, you are here to speak for him?

Mr. RALSTON. Yes, sir.

The CHAIRMAN. When did the office of the Assistant Secretary come to the conclusion that any findings made by Commissioner Caminetti were a mere scrap of paper so far as that office was concerned?

Mr. RALSTON. So far as having any legal or binding force or effect of any kind, I think I am correct in saying that the office of Mr. Post came to that conclusion years ago, although that conclusion has not been acted upon until comparatively lately.

The CHAIRMAN. How lately?

Mr. RALSTON. I would not like to say. Do you know Mr. Clayton? About three or four years ago, Mr. Clayton says.

The CHAIRMAN. About three years ago, and yet within the last 30 days Mr. Caminetti's office and his office force have been consuming their time in reviewing these cases and making their recommendations to the Secretary?

Mr. RALSTON. I can not help that. Mr. Caminetti may have wasted his time in many directions.

Mr. RODENBERG. Through what other source could the Assistant Secretary get these facts, if he did not get them from the Commissioner of Immigration?

Mr. RALSTON. I think precisely as Mr. Clayton has explained, Mr. Caminetti is the filing and forwarding officer of the reports that come into Mr. Caminetti from all of his agents all over the United States.

Mr. RODENBERG. And they are all subject to him; they are under his orders?

Mr. RALSTON. They are all subject to him and immediately under him, and he in turn forwards these reports to the Secretary or the Assistant Secretary for their final determining action.

Mr. VAILE. Let me refer to the letter of the Assistant Secretary in which he specifically mentions the recommendation of the Commissioner General of Immigration—a letter dated within the month.

The CHAIRMAN. You may read that, and when you are through I will suggest a more orderly procedure.

Mr. VAILE. On the 25th of March the Assistant Secretary addressed a communication to the commissioner general, found on page 47 of these hearings, complaining that the bureau was dilatory in transmitting Communist Party warrant cases to the department for decision, and directing the commissioner general to transmit by bearer not less than 10 files in these cases.

On the 27th of March he again wrote the Commissioner General of Immigration, requiring him to send 100 records per day and specifying the order of priority as follows:

The order of priority in transmitting those classes shall be as follows:

1. Cases in which a memorandum, with or without recommendation, is submitted under the signature of the commissioner general or other duly authorized officer of the bureau.

2. Cases in which a memorandum, with or without recommendation, has been prepared in the bureau but to which the signature of the commissioner general has not been attached.

3. Cases in which no memorandum has been prepared by the bureau.

In specifically referring to the memorandum cases, he at least acceded to the practice of preparing a memorandum by the commissioner general.

Mr. RALSTON. It may be, Mr. Chairman, that in very many cases the Secretary or Assistant Secretary, in the interests of peace, have not cultivated a quarrel with Mr. Caminetti over the powers which he undertook to exercise. They may have been slow and subject to criticism in that respect. But the only thing which concerns this committee so far as this particular point is concerned, is whether, in point of fact, Mr. Caminetti had the power which he assumed. And I say without any fear of successful contradiction, that he did not have that power and that his recommendations for deportations were not authorized by law and that no law can be found giving them any possible legal force or effect.

Mr. POE. Whether he did or did not have any judicial power, each and every case under the law was subject to be reviewed de novo by Mr. Post, acting for Mr. Wilson, the Secretary?

Mr. RALSTON. Yes; except I would not speak of it as a review de novo.

Mr. POE. No; that is not correct, but you might say a trial de novo or whatever you mind to call it. It is a hearing of the case as though it was a de novo trial then and there; would not that be so?

Mr. RALSTON. Yes.

Mr. POU. That is the controversy, as I understand it——

Mr. RALSTON. I will say, just by way of explanation, then I want to submit a suggestion to the committee following it, the correspondence between Mr. Caminetti and Mr. Post which has just been read, I think it may be proper to observe at this time, illustrates a condition of affairs which was absolutely cruel. I want to say the treatment which has been accorded to these men throughout the country, with whose ideas I have very little sympathy, if I have any, excepting that they are human beings—the treatment which has been accorded them and which caused in part those very letters which have been read, was absolutely cruel.

Now, considering the situation——

The CHAIRMAN. Mr. Ralston, I think in the interest of orderly procedure, that we should hear further from the proponents of the resolution and then we will hear you and then hear them in rebuttal. I think it will be better to have matters proceed in a more orderly way.

Mr. RALSTON. I will submit to the directions of the committee, but may I just make this observation in that line, if you please: I am in the midst of a trial in the Supreme Court of the United States now and the Supreme Court will commence its session in a few moments—I presume about the time the committee will want to adjourn.

The CHAIRMAN. I have other duties I must assume in a very short time myself.

Mr. RALSTON. It seems to me, Mr. Chairman, that in the orderly presentation of this matter we ought to know in the greatest possible detail every charge or supposed or imaginary charge that is to be brought against Mr. Post and then have our opportunity of replying to them. And may I make this suggestion: The gentleman presenting the case in opposition to him has spoken of one or two or three cases which he has treated as illustrative. Now, of course, we can not reply or make any complete or proper reply before this committee to an illustrative case. I think we have a right to know what cases he thinks that particular case stands for. This committee can not report that, on the strength of the Bosco and other illustrative cases, Mr. Post has done wrong. What are the cases? Let us know completely and absolutely.

The CHAIRMAN. I understand Mr. Hoch's associates, who were with Mr. Hoch presenting the matter, were just about to begin with specific cases.

Mr. RALSTON. We want the whole thing, and, of course, the opportunity to fully examine and reply to them before we make our formal reply.

STATEMENT OF HON. J. N. TINCHER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS.

Mr. TINCHER. I have two cases that I want to present to the committee somewhat in detail, cases in which I believe that Mr. Post has violated the law, acted without authority and acted against the interests of the Government of the United States.

The first is the case of Dudinsky. That is noted to some extent in the hearings, but I want to say to the committee that I did not rely

entirely in preparing myself in this case upon what appears in these hearings, although they are quite full. My stenographer went with the investigators to the office of the Commissioner of Immigration and I had the benefit of the copies of the transcripts in those cases for several days and have tried to prepare them for presentation here.

I am surprised at the attitude taken by counsel here in the last few moments, especially in the face of the Dudinsky case. It happened as late as March 20; that is, the transactions between Mr. Camenitti and Mr. Post were begun on March 20. And certainly at that time the Assistant Secretary was inviting the recommendations of Mr. Camenitti. They had a long correspondence concerning this case, and, not only that, but the Assistant Secretary had quite a full correspondence with the Department of Justice.

This man Dudinsky is a Russian, 31 years of age, single. I am unable to tell the committee when he came to the United States, because he has refused to reveal that information. He is not only a member of the Communist Party, but he was a delegate to their convention, thoroughly familiar with the Communist constitution, and he moved and urged its adoption in October, 1919; was a member of the first Russian Communist branch, and had many of the records of his organization in his room when he was arrested.

I want to pause there to say that in a letter of the Assistant Secretary to Mr. Camenitti, which appears here in these hearings which the committee will have the privilege of reading, is the first time in my brief history that I ever knew of an executive officer scolding or criticizing prosecuting officers for using as evidence the things that they found in a man's possession when he was arrested. And by a wave of the hand here, Post says to Camenitti they must not be considered.

He was fully cognizant of the law in the matter, advised other members to keep their membership cards and papers at home and not to carry them on their person, and advised, if one of these meetings were raided, the members were all to claim that they belonged to different kinds of propaganda organizations.

He was a delegate to the Communist Party convention held in Chicago in 1919. He helped to adopt the manifesto and program of the Communist Party of America at that time. He especially advocated the overthrow of the Government of the United States by force and violence, and, as a leading agitator, was arrested December 19, 1919, for violation of the act of October 6, 1918, and is no doubt a dangerous man to the country and to civilization. There is not any dispute about those facts. Not even Post contends there was a dispute.

The Department of Justice presented this matter to the Department of Labor fully, called their attention to the fact there was not any dispute, and the recommendations all went to Mr. Post from the Department of Justice as well as from Mr. Camenitti.

It has also been suggested here and was asked by the chairman of some witness as to whether Post had any way of getting information except from the regular files. The hearings in this case will disclose he did. The copies of letters are printed there from the attorneys for the anarchist, for the man who was to be deported. He had direct communication with Post. Those letters disclose he had not

only correspondence with him but personal interviews with him, because when they demand that their man Dudinsky be released upon bail they call Mr. Post's attention to the verbal conversations they had had with him. Those letters are printed in the hearings.

And that is the only thing he could have acted on in the Dudinsky case, because Dudinsky was an organizer who believed in the overthrow of this Government by force; he had moved the adoption of the constitution of an organization that had in it those provisions, and he had traveled about over the United States, from convention to convention, advocating those things.

Now, Post did not cancel; he released this man on a thousand dollar bond, over the protest of the Department of Justice and over the protest of Mr. Camenitti and without anything being in his office or in the Department of Labor that even suggested that there was any merit in doing so.

I doubt if he technically violated the law. I mean by that, that I think in the Dudinsky case, probably as glaring a case as you will find of the abuse of his discretion, perhaps he stayed within the law; but I think it is a case this committee should be fully advised upon for the reason there could not be a more glaring disloyal act upon the part of an administrative officer of the United States than the release of Dudinsky on that little bond.

MR. POST. Has Dudinsky gotten out of the jurisdiction? What has become of him?

MR. TINCER. I tried to find out and I do not know. I do not think any one else knows where he is. The Department of Justice have an appropriation to prosecute these men, but they have not an appropriation sufficient to prosecute them and then to keep a man on every one of their trails as fast as Post can turn them loose. And that is my understanding, that they do not know where Dudinsky is.

MR. RALSTON. Do you not think the Department of Justice violated the Constitution in insisting on a \$10,000 bail?

MR. TINCER. I do not; no. I think, gentlemen of the committee, that if I have taken an oath to help destroy this Government by force, that if I have moved in a public gathering the adoption of a constitution of an organization that has for its purpose, at the first possible moment, to destroy my Government by force, if I have moved the adoption of the Third International—and if this committee is not thoroughly familiar with that, I hope you will read the brief in the Martens case which quotes from it, as fierce an attack upon a Government as could be—if I believe in those things—well, I will say this, if I believe in turning a man loose who believes in those things on \$1,000 bail, I believe I ought to be deported.

And the Department of Justice was clearly within its rights. This young man, Hoover, went over there and tried this case. He was thoroughly familiar with the facts and he begged the department to hold this man because he was a vicious organizer, but I doubt if with the able counsel hanging on every legal technicality that Post will have a right to hang on that this case would justify impeachment from a legal standpoint. But the next case I want to call to your attention does, and that is the Wirth case, from Chicago, a young German, 22 years of age. Wirth is a graduate of the Chicago University. He has been in this country for several years and has no notion of

ever becoming a citizen of this country. He proposes to return to Germany as soon as he finishes his studies in this country. He joined the Communist Party. His roommate is secretary of the local organization in Chicago and there is no dispute he believes in the constitution of the organization to which he belongs. He believes in the Third International. He did not want to advocate the overthrow of Government by force, but he belongs to a party that is for it and our statute says he must be deported and he admits his membership. The matter is gone into fully and an examination of the record will disclose he is keen, bright—the professors of his college say he is one of the quickest men in the college. Remember, he says he belongs to this party and does not intend to become a citizen of the United States; that his home is in Germany and he intends to go back there when he finishes his studies.

Here is why he is turned loose: He is discharged because he says he joined the Communist Party to study social conditions. I claim that that case is in this condition: A Federal judge can be impeached—he can not be impeached, as I understand it, for the ordinary abuse of his discretion, but I believe if a Federal judge stands up a defendant tried for a crime—tried and convicted of a crime and who pleads guilty of the crime, stands up before the court and says, "I am guilty; I am a member of the Communist Party," and Post or anyone else says to him, "You are discharged," as he said in this Wirth case, "Canceled," I think it is a clear—probably not the worst case in the record—but it is a clear violation of the law, and justifies his impeachment.

Mr. RODENBERG. What did he do in the Wirth case—release him?

Mr. TINCHER. He just absolutely canceled the warrant. It might be he could hide behind the proposition he disagreed with the findings as to Wirth's guilt, if it had not been he wrote a letter and he finds himself Wirth is guilty. He admits that in his signed statement to Caminetti—admits he is a member of the Communist Party, and yet he discharges him—now, get this—because of the object that Wirth had in joining the party. What was that? Wirth says to study social conditions. So I suppose that Post has constituted himself an executive officer of this Government up here that will say to this Congress, that passed this law, "It is all right for you to deport a member of the organization that has for its purpose the destruction of Government, provided he joined for certain purposes and did not join for other purposes," because in this letter his excuse for canceling it is simply he joined to study social conditions. He is going to report those social conditions to Germany, I suppose, when he gets through, because he says he is going back there to live.

Now, that man is a graduate of the Chicago University; he believes in the constitution of the Communist Party; he is familiar with the Third International, is studying it and attending the meetings regularly and rooms with the secretary of the organization. And, by the way, the secretary of that organization is also a graduate of the Chicago University and he and this man Wirth are both in Chicago taking postgraduate work in that university.

It may be I am unduly alarmed about this thing, but it seems to me when those conditions exist it is time we took some action and looked into it. I hope the committee will read that brief of the Department of Justice analyzing that Third International. I do not think any

man can say "I am a member of the Communist Party; I am a member in good standing; I believe in their constitution and I believe in the Third International; I am not a citizen of the United States; I do not intend to become a citizen of the United States; I am a citizen of Germany," can, under any possible excuse, be permitted to stay in this country. And if he can be, it may some day be a poor place for some of the others to stay.

I want to call attention, just briefly, to this proposition. Mr. Hoch said, in opening his statement to this committee, there was not anything political in it and I do not think there is; I do not think any political party but one could claim Post as a member. He was an editor of many volumes of literature before going into office, all of which disclose he has a party of his own, the single tax party and free love party. Those are his tactics. He has written a book, and I will ask permission to take out paragraphs from it and put them in these hearings, showing that he advocated, before he went into this high office, in his own books, the proposition of free love; that is, that a man and woman who were married might, either of them, properly declare themselves divorced, and all that any civil court should have a right to do, in any of those cases, would be to adjust the property rights of those parties.

Mr. CLAYTON. I suppose, Mr. Chairman, the gentleman is going to put that in the record?

Mr. RODENBERG. Yes.

Mr. TINCHER. I will put quotations from it in the record that will bear out that statement. I think that is all I have to state. I do not want to take your time, but I do want to say especially the Dudinsky case and the Wirth case are both covered quite fully in the hearings, and I think they will justify action on the part of the American Congress in this matter.

The book I asked you to quote from is *Ethical Principles of Marriage and Divorce*, by Louis F. Post (copyright, 1906). I procured it from the Congressional Library.

On page 72 is found this paragraph:

The whole problem of conventional divorce, considered simply as nullification, resolves itself into a question of civil regulation for the protection of rights. The rights of each party to the marriage must be conserved. So must the rights of children. So, also, must the rights of society as a whole. This done, however, there is no good reason why the conventional marriage should not be dissolved if the parties avow, or either of them avows, that the natural marriage no longer exists.

On page 77 I quote a portion of a paragraph as follows:

It is a sad mistake to suppose that strict divorce laws are conservative of marriage sanctity.

On page 78 I quote:

It is not by urging upon organized society a rigid enforcement of the marriage tie that churches can hope to emphasize either the sacredness of marriage or the inviolability of its symbolism.

STATEMENT OF HON. ISAAC SIEGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK.

Mr. SIEGEL. I just want to be very brief in saying that the people of the city of New York are vitally interested in one part of the acts of the Department of Labor. When these arrests are made and

the warrants have been issued, these hundreds of men have been brought to New York City, sent to Ellis Island, and then released without the giving of any bail at all, or nominal bail. There is no authority in law for the release of any person under the immigration act without the giving of at least the sum of \$500 bail—I have looked into that question very thoroughly—and the action of the Secretary in doing so is in violation of law.

In addition to that, it is frankly admitted by everybody that there exists a sort of open hostility between the Department of Justice, Mr. Post, and Mr. Camenitti in regard to all of these alien deportation cases. The people in New York City and the State of New York feel that they should not be saddled with the burden of having to take care of hundreds of these alien anarchists who have been released and placed upon the city of New York. New York City and State have a sufficient burden of their own and believe that the question should be thrashed out by the Judiciary Committee to determine once for all who is responsible for the scrap or fight that is on between both of these departments.

It is frankly admitted by Mr. Hoover, Assistant Attorney General, that both he and the Department of Labor can not reach any agreement.

There has been some statement made here a few moments ago in regard to the question of the rights of an alien. In regard to these deportation cases the United States Supreme Court, in what is known as "Nine Japanese cases," a series of cases, says all he is entitled to is a hearing. That view of mine is confirmed by a letter of Assistant Secretary Abercrombie, which I insert for the information of the committee:

FEBRUARY 14, 1920.

MR. W. H. JOHNSON,

Associate Editor of the Review, 148 Nassau Street, New York, N. Y.

DEAR SIR: Adverting to your several letters addressed to the department with reference to an editorial article which appeared in the New Republic under date of December 24, 1919, which article took exception to the interpretation which the Bureau of Immigration and the "lower Federal courts" have placed upon the anarchy provisions of the immigration law and also commented upon certain specific cases, you are advised that an unprecedented press of work in the Bureau of Immigration, to which bureau your letters are referred for the drafting of a reply, is responsible for the delay which has occurred in furnishing you with the information which you seek.

The article in question seems to find particular fault with the construction which the Bureau of Immigration has placed upon the act of October 16, 1918, which construction includes within the deportable classes aliens referred to in the article as "philosophic" anarchists. In this connection it seems pertinent to quote as follows from sections 1 and 2 of the act in question:

"SECTION 1. * * * Aliens who are anarchists; * * * aliens who disbelieve in or are opposed to all organized government; * * * shall be excluded from admission into the United States.

"SEC. 2. That any alien who, at any time after entering the United States, is found to have been at the time of entry, or to have become thereafter, a member of any one of the classes of aliens enumerated in section 1 of this act shall, upon the warrant of the Secretary of Labor, be taken into custody and deported. * * * The provisions of this act shall be applicable to the classes of aliens mentioned in this act irrespective of the time of their entry into the United States."

As the law itself makes no distinction between the philosophical anarchist and the anarchist who advocates resort to force and violence to accomplish his aims (abolition of the Government), the department, for reasons which must be obvious, is not justified in construing a distinction. It is, of course,

its duty to enforce the law as it finds it, and not to fritter it away by administrative interpretation not justified by the language of the statute itself. As you are perhaps aware the expression "aliens who are anarchists" has already been made the subject of judicial interpretation by the district court for the Southern District of New York in the case of Frank R. Lopez (mentioned in the article) as follows (decision subsequently affirmed by the Circuit Court of Appeals):

"The theory of anarchy and that of Government must at all times be in conflict, and I can not believe that the philosophical anarchist, at least so far as his ultimate purpose is concerned, is any less dangerous than is the advocate of violence. Indeed, in a sense, the insidious character of the teachings of the one is more to be feared than the teachings and activities of the other."

Assuming, as the department has assumed, that Congress intended that the word "anarchist" should be so construed as to include those aliens who advocate the abolition of Government by peaceable measures, the constitutionality of such act would seem to find support in the following language quoted from the Supreme Court's decision in the case of *Turner v. Williams* (194 U. S., p. 294):

"If the word 'anarchists' should be interpreted as including aliens whose anarchistic views are professed as those of political philosophers innocent of evil intent, it would follow that Congress was of the opinion that the tendency of the general exploitation of such views is so dangerous to the public weal that aliens who hold and advocate them would be undesirable additions to our population, whether permanently or temporarily, whether many or few, and, in the light of previous decisions, the act, even in this aspect, would not be unconstitutional, or as applicable to any alien who is opposed to all organized government."

It is true, as stated in the editorial, that the deportation of aliens from the United States has been made an administrative function, which is at present vested in the Department of Labor. Our immigration laws in this respect are not materially different from the immigration laws of various other countries. Repeated decisions of the Federal courts of this country (including the Supreme Court) have determined that Congress has the undoubted power to exclude aliens from the United States; to prescribe the terms and conditions on which they may come in; and to establish regulations for sending out of the country such aliens as have entered in violation of law and to commit the enforcement of such conditions and regulations to executive officers. These decisions have further determined that the deportation of an alien who is found to be here in violation of law is not a deprivation of liberty without due process of law; and that the provisions of the Constitution securing the right of trial by jury have no application (*Chae Chan Ping v. United States*, 130 U. S., 681; *Nishimura Ekiu v. United States*, 142 U. S., 651; *Fong Yue Ting v. United States*, 149 U. S., 698; *Lem Moon Sing v. United States*, 158 U. S., 538; *Wong Wing v. United States*, 163 U. S., 228; *Japanese Immigrant case*, 189 U. S., 86; and *United States v. Sing Tuck*, 194 U. S., 161).

The foregoing comment will serve to answer paragraphs Nos. (1) and (2) in your letter.

Referring to paragraph (3) of your letter, I beg to state that it is not the desire of the department to enter into any controversy in the press over the cases mentioned, by name, in the editorial, or over any other case or cases, as far as that is concerned. It seems to it to be sufficient to merely state that the records in question received the department's careful consideration when they were pending before it, and that the evidence submitted and adduced in each case satisfied it that the alien was properly a subject for deportation under the law.

With reference to the fourth paragraph of your letter, you are advised that the Bureau of Immigration does not have any extra copies of the records in the six cases, which are commented upon in the article. I might add that it would be contrary to the established and general policy of the department to furnish them if it had. The need for establishing such a general policy will, I think, be apparent to you when it is stated that the records of this nature often contain confessions or admissions of a character which would prove embarrassing should they be permitted to come to the notice of third parties, and the department feels that, unless particularly persuasive reasons are shown to exist why they should be furnished to persons having no direct interest in them, it should not violate the confidence which the parties to the records reposed in the Government when they gave their evidence.

As requested in the fifth paragraph of your letter, there is inclosed herewith a copy of the immigration laws and regulations now in force. Your attention is particularly invited to the act of October 16, 1918, which you will find on page 31 of said pamphlet.

Respectfully,

JOHN W. ABERCROMBIE,
Acting Secretary.

Years ago that hearing was held before the collector of customs or one of his assistants. The United States Supreme Court held that that was sufficient. Nowadays, under the act of 1917, we provide for a hearing before the Secretary of Labor. Now, what is the actual practice to-day? Assuming an alien has been arrested on a warrant, charged with being an anarchist—and there is no difference between being an anarchist, either philosophical or otherwise, as has been held by Judge Knox, and by the United States Circuit Court of Appeals in the second district—he is arrested on what is known as a warrant of arrest, taken into custody; his bail is usually fixed in the warrant of arrest, sometimes at \$500 or \$1,000, or a higher amount. He is taken before an inspector. He is entitled to counsel. He usually has counsel. When the inspector is through with his hearing the commissioner at Ellis Island examines the record and makes his recommendation, after the inspector has made his. The papers are then sent down to Washington, to Mr. Camenitti, and he and his law chief, Mr. Peters, formerly Mr. Parker, make their recommendation. It then goes to the Acting Secretary of Labor, whether Mr. Post or Mr. Abercrombie, but usually to Mr. Post. Mr. Post then makes his final recommendation or action.

But it does not stop there. A lot of evidence is usually received of which the Attorney General nor anybody representing the Government know nothing, in the shape of affidavits or hearsay statements. Then, when that is all over, 30 or 60 days appear to be granted to the Communist or Anarchist as stays, so that writs of habeas corpus are then issued and we have the whole fight up to the Supreme Court.

I think, for the first time in the history of this country, an administrative official has attempted to go into the history of what the word "anarchist" means, is by Mr. Post. He quotes everybody from Tolstoy all the way down, up to date. It results in one thing; instead of having a hearing which will be swift and prompt, in the case of a man charged with being an anarchist, and action taken which will serve as a lesson, we have delays sometimes extending over two or three years. It has brought the law into ill repute; it has made the whole expulsion or deportation act a joke and a farce.

I might add this, also, that many of those arrests, made all over the country, should originally never have been made. They have taken into custody thousands of men at one time, without being able to give them a swift hearing, which does not result in bringing the law into that respect which it should have. It appears some of these hearings were held five months ago, and they should have been determined and decided very swiftly and very quickly.

In addition to that, there should not exist this feeling of resentment between the Commissioner General of Immigration and the Acting Secretary of Labor and it is up to the Secretary himself to end the proposition by taking action; otherwise it is up to this committee to ask the Judiciary Committee to act.

Mr. CLAYTON. Do I understand the gentleman to say that these hearings have been delayed for five months and the delays in handling those cases, of two or three years, were in the office of the Assistant Secretary of Labor, who is the person in question?

Mr. SIEGEL. I say this: The trouble lies between the Commissioner General of Immigration and the Assistant Secretary of Labor, and it is the Assistant Secretary of Labor whose name is attached to the releases of all these people, throwing them upon New York. The Hartford hearings have lasted for five months and they are not disposed of, and when you proceed to cancel warrants 100 at a clip, without hearings in the cases—you canceled 38 cases without any hearings before you of any kind or description—you are violating your oath of office.

Mr. CLAYTON. May I suggest again that in each of the cases referred to, where they have gone to the Assistant Secretary, the very same record has been before him that was before the Commissioner General of Immigration; and if he had a right to make an abstract which we do admit, that abstract was made upon the evidence that was before the Assistant Secretary.

Mr. SIEGEL. As I understand it, it clearly appears what we have here is a case of tweedle-dee tweedle-dum. Mr. Post claims the responsibility is upon the Commissioner General of Immigration; and, on the other hand, the Commissioner General of Immigration claims the responsibility is upon Mr. Post. And as a result of the fight between both of those men and the Department of Justice, the result is this, that these aliens who should have been deported have not been deported and, at the same time, innocent men have been held in custody for months without a hearing, and at the same time no support given to the Commissioner General of Immigration who issues the warrants. Let the responsibility be placed upon the shoulders of the man who is guilty.

(The committee thereupon adjourned.)

COMMITTEE ON RULES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Friday, April 30, 1920.

The committee this day met at 10 o'clock a. m., Hon. Philip P. Campbell (chairman) presiding.

The CHAIRMAN. The committee will be in order.

Mr. Ralston, you desired to make a brief statement at this time?

Mr. RALSTON. Yes, sir.

The CHAIRMAN. You may proceed.

**STATEMENT OF MR. JACKSON H. RALSTON, ATTORNEY AT LAW,
EVANS BUILDING, WASHINGTON, D. C.**

Mr. RALSTON. Mr. Chairman, I would like to make a statement at this time. I think it would be fair to the committee and to Mr. Post to say that Mr. Post was not present the other day and will not be here to-day, and perhaps for other sessions of the committee, for the reason that he is, in effect, for the present moment, the Secretary of the Department of Labor, Mr. Wilson being in very ill health;

that his duties in the department are of the most exacting nature, and involving policies and detail both, and that justice to the Government under the circumstances demands that he should apply himself just as closely as he can to the departmental matters. So that I want to suggest that it is not from any desire to appear discourteous or inattentive that he is not here, but because of the absolute pressure upon him by departmental matters.

Now, Mr. Chairman, there are one or two suggestions that I would like to make, and the present seems an appropriate time to do so. As I understand it, this document which I hold in my hands, entitled, "Communist and Anarchist Deportation Cases," is submitted before this committee for whatever it is worth.

The CHAIRMAN. And as a part of the record, as I understand.

Mr. RALSTON. As a part of the record. Now, I further understand, Mr. Chairman, that this document represents but a small fraction—but a fraction, at any rate—of the testimony which was taken by the Immigration Committee and relating to this general subject. I think that in fairness to Mr. Post the Immigration Committee will agree that all testimony that was taken by them, whether its tendency is in favor of Mr. Post or against him, that all that testimony should be submitted to this committee and that this committee and Mr. Post's counsel should have the benefit of it. I understand that a number of witnesses, some of the names of whom I am familiar with, were examined before that committee, who testified as to events in connection with the arrest of many of these men, whose testimony shed important light upon the unjustifiable and unconstitutional attacks upon the rights of persons which were made by the Department of Justice. I understand that those witnesses testified before the Immigration Committee, and that their testimony is not before this committee.

Therefore, as far as I have a right to do so, I take this opportunity of demanding that a full statement be made to this committee of all the testimony, however it touches, which is in the hands of the Immigration Committee. And I do not think that this committee can proceed to advantage without it. I think that it is a matter of justice, not to the committee alone, but to Mr. Post and the attorneys for Mr. Post, and to the public, that this testimony taken before the committee should not be kept secret; not kept as if taken in executive session, but be produced to the committee. It will save time to this committee in the end if it is, because this committee will find its labors considerably lessened, perhaps, and the scope of its investigation limited if it knows fully everything that is in the hands of the Committee on Immigration. I therefore ask, before we proceed further, that you will ask—or, at least at a very early moment—that the Committee on Immigration be asked to submit all the testimony bearing in any respect upon the activities of the Department of Justice, or the activities of the Department of Labor, having any bearing on the subject matter before this committee. Now, that is one request that I want to submit at this time.

Perhaps I may finish what I have in mind to say before the committee takes cognizance of all the phases of that request.

The CHAIRMAN. The committee will take that matter up in executive session.

Mr. JOHNSON of Washington. I would like to be permitted to make a statement in connection with that matter.

The CHAIRMAN. We will hear you later, Mr. Johnson.

Mr. RALSTON. Going further, I think that in fairness to Mr. Post he should know definitely what he is charged with. I have read this confused mass which has been submitted here—this hearing. There is in this paper no straightforward, distinct charge of any wrongdoing on the part of Mr. Post. It will take just a moment, I think, to show that to this committee. This committee, if it acts on such a document, is acting in the air; it does not know what it is doing, or why it is brought here. This report is the so-called testimony of Mr. Blackwood. Some one has told me that Mr. Blackwood was an official of the House of Representatives. If he is a putative lawyer, I do not know; he is not a real lawyer; that we can say beyond any question of doubt, because a real lawyer would not have done the things which he did and said things which he said before the Committee on Immigration. And perhaps I can give the committee an illustration of the way in which Mr. Blackwood has acted, according to his own testimony. If the committee will refer for an instant to page 1 there will be found the memorandum in the case of one Preis, who was determined to be a member of the Communist Society, or whatever it may be called, the Communist Party. The committee will note that this is dated January 24. In other words, until January 24, the Secretary of Labor had never declared that members of the Communist Party fell under the ban of the law; it was an open question—

The CHAIRMAN (interposing). Well, did not Congress decide that?

Mr. RALSTON. No, Mr. Chairman, if the committee will allow me, Congress said not one word about Communists. It spoke of anarchists, and those who believed in the destruction of government, and those who believed in the use of force and violence against organized government. And it was an open question, and argumentatively, at least, it is an open question to-day, whether the Communist Party does believe in the use of force and violence in the sense in which those words are commonly employed. It evidently does believe in what is known as industrial strike in the broadest possible phases in order to bring about political reforms. Whether it believes in anything beyond that is a debatable question. But the particular point I am making is, that it was not until January 24 that that debatable question was determined so far as the Department of Labor was concerned. It has never been, I think, determined in the courts, although I believe it is now pending for determination in Boston.

Now, then, bearing in mind the date, Mr. Blackwood says, on page 3:

In view of the foregoing opinion or decision of the Secretary of Labor, which the chairman referred to, it would seem that alien members of the Communist Party were subject to deportation under the act before mentioned.

That was not until January 24—

It would further seem that the only evidence necessary to obtain said deportation would be proof of alienate membership in the Communist Party.

Believing, therefore, that the question was settled once and for all, additional number of aliens whom it was believed belonged to the Communist Party were taken into custody and warrants of arrests on a deportation proceeding obtained. Hearings were accorded as rapidly as possible under exist-

ing circumstances. However, a lack of clerical force and competent interpreters delayed these hearings to some extent. Additional delay was caused by attorneys appearing in behalf of the arrested aliens and also by the lack of a sufficient reviewing force in the Bureau of Immigration.

Something like 3,000 aliens were taken into custody on warrants of arrest, and it naturally followed that in some instances the aliens so arrested were later shown not to be connected with the party in question. These were released as early as possible, and, as a matter of fact, composed a very small per cent of the number arrested.

Now, therefore, you will see, Mr. Chairman, these arrests took place on January 2, when there had been no finding whatsoever that membership in the Communist Party came under the ban of the law, and the decision was not rendered until the 24th, and Mr. Blackwood tells you that because of that decision on January 2 thousands of men were arrested; an absolute absurdity on the face of it, but that is a part of the testimony given.

Now, without desiring to delay the progress of the committee, and I would much rather expedite in every way—in fact, I am trying to expedite it—let me point to another difficulty we have in determining why we are here—and I do not think we will know why we are here until the Committee on Immigration or some other competent authority tells us in an understandable way. That they have not done.

May I call the attention of the committee to the statement of Mr. Vaile on page 18. Mr. Vaile, on pages 18, 19, and 20, vindicates every legal position taken by Mr. Post. Now, for what reason are the subsequent exhibits in this record put in? To prove that Mr. Post is wrong, notwithstanding Mr. Vaile, in his legal conclusions, or for the purpose of proving that Mr. Post has departed from his own conclusions in certain cases? I do not know; and the committee can not know.

Mr. Vaile says emphatically that the conclusions of Mr. Post are correct. The committee took the Truss case. Here is what Mr. Vaile says:

Now, the alien here, Truss, denies that he has ever read the call or the constitution of the Communist Party of America or the manifesto of the Communists International, and, of course, if we are going to deport him we should establish the fact of his acquaintance with the principles of the Communist Party. From a technical standpoint this is where the Truss case fell down.

Now, the Committee on Immigration follows, by laying before this committee the comments of Mr. Caminetti on the Truss case, for the purpose of comparing them with the comments of Mr. Blackwood in the same line, when a member of their own committee admits that Mr. Post was correct in his conclusions in the Truss case, and that the principles that he laid down were likewise correct.

I say that in that state of confusion—confusion worse confounded—we are asked to come here and defend Mr. Post against what? I would like to have an answer. Perhaps the Committee on Immigration can give an answer. It certainly has not done it yet.

I think that those are the principal points that I have in mind, Mr. Chairman, at the moment. Just summing up for a moment, I think that I shall move that before these proceedings proceed further in any appreciable degree, at least, the Committee on Immigration throw on the table everything that they have got, whether it

cuts in favor of Mr. Post or whether they think it cuts against him. It is fair to the committee and to us that they should have it.

That is, as I say, the first proposition, and then the second proposition is that there isn't a definite charge of any kind against Mr. Post. If this committee is not going on a broad fishing expedition in the hope of catching something at the end of an expensive hearing, let us know now what those charges are. The Committee on Immigration has been examining those charges for months. The first hearings—secret hearings, if you please—took place as long as November, and since that time, from November until May, there is no formulation of a single charge against Mr. Post; and no one can formulate against him a charge on anything except that he is a believer in the injunctions of the Constitution of the United States, a thing that has been flagrantly, persistently, and determinedly violated in a dozen respects by the miscalled Department of Justice.

The CHAIRMAN. The Committee on Rules is sitting here rather as a grand jury than as a court, listening to what is brought before it. I suggested before the hearings opened to-day, I think it well for the proponents of the resolution before the committee to develop their case in the light of what Mr. Ralston has said. The proponents of the resolution will proceed, and at a later time to-day the committee will take up specifically the suggestions made by Mr. Ralston.

You may proceed, Mr. Johnson.

Mr. JOHNSON of Washington. Mr. Chairman, I would like to state again for the record that I am not the proposer of the resolution before this committee. I realize that much of the testimony taken before the Committee on Immigration and Naturalization, of which I have the honor to be chairman, will have to come before this committee, or before the Judiciary Committee, if these proceedings continue.

Now, I think it would be fair to the members of this committee to say that for myself I have doubted the advisability of attempting the impeachment of Louis F. Post, for the reason that for myself, as a Member of Congress, or for Mr. Hoch, of Kansas, or for Mr. Tinch, or any other Member who has examined six or seven of these particular cases which I contend show a violation of the law; that Mr. Post, in defending himself, would in all probability call up the records in 3,000 cases; he would be entitled to his defense, and the examination of those cases would last until this Congress expired. It would take weeks and weeks to examine the papers.

One of the charges that we make is this: That these cases, in spite of the machinery that has been in operation down there for years, and the machinery that has been recognized over and over again by Mr. Post, have been yanked up at the rate of 100 a day over the heads of the law examiners, and over the head of Mr. Caminetti. This means that the records have not been finally examined. The attorney for Mr. Post says that these memoranda were scraps of paper and amounted to nothing.

As to the statement of Mr. Blackwood, I will say to the committee that I have known him for some time, and I have found him competent to examine these papers. Copies of the papers are piled up in our committee room in large quantity. This report of a subcommittee—not of the Committee on Rules, but of the Committee on

Immigration and Naturalization—purports to be an assemblage of copies of reports in various cases of various kinds. The Committee on Immigration and Naturalization, acting under a special rule given to it by Congress last December, tried to find out what was the trouble down there, and what we could do to correct the trouble. It is apparent that the machinery is not working. The whole thing is in a state of collapse. We desire to correct it. We did not start to make an attack on the Secretary or the Assistant Secretary. There were no secret hearings held in November, unless you consider meetings that were not recorded, where numerous members of the Committee on Immigration and Naturalization would sit together in a hotel or at some such place and discuss plans. The only executive hearings we have had were during the last few days in March, and a few days in April, in which we took statements of men who had been investigating conditions in jails where large numbers of men were confined waiting proceedings for deportation. I believe I will be able to charge both of these departments in the future as being responsible for the fearful mixup, at least—

The CHAIRMAN (interposing). I was going to ask, is there a conflict of authority between the Department of Justice and the Department of Labor in respect to these matters?

Mr. JOHNSON of Washington. Absolutely.

The CHAIRMAN. How does that arise; give an illustration to this committee.

Mr. JOHNSON of Washington. I want to say, as chairman of this committee, acting under special authority of the House, and the entire committee acting in accord, the committee has endeavored not to be a probing committee—not to involve these two departments by summoning witnesses, or bringing witnesses and their papers, to array one department against the other. At times I felt it would be highly desirable to bring down agents of the Department of Justice and all their papers, and then the next day somebody from the Department of Labor. I have refrained from doing that. At the proper time the Immigration Committee will call witnesses from the Department of Justice.

This criticism by attorney of the statement as to the time of making arrests means nothing. It is well known that a big raid was made on the night of January 2.

The CHAIRMAN (interposing). Those were made under the Department of Justice?

Mr. JOHNSON of Washington. Yes; there were three or four raids. They picked up the Russian Workers and later the Communist Party, and later the Communist Labor Party. I am willing to say for the record that the arrests of those 3,000 or nearly 5,000 men, or more, that were picked up, broke up a damnable conspiracy against this country.

The CHAIRMAN. That was under the Department of Justice?

Mr. JOHNSON of Washington. That was under the Department of Justice.

The CHAIRMAN. What attitude has been taken by the Department of Labor in respect to this?

Mr. JOHNSON of Washington. The Department of Labor has heretofore attempted to interpret what Congress meant where it used

plain words. Here it found itself hanging fire with men in jails. Here the Department of Labor gets into a letter-writing contest, with Mr. Post at one end—and he is a prodigious letter writer—and Mr. Caminetti at the other, and the bandied letters back and forth, and finally Mr. Secretary Wilson—

The CHAIRMAN (interposing). Now, on what controverted question did all this correspondence arise?

Mr. JOHNSON of Washington. As to what Congress meant when it said anarchists should be deported, and as to what Congress meant in the language dealing with those who would attempt to destroy or overthrow organized Government.

The CHAIRMAN. Did this Department of Labor eliminate the Department of Justice?

Mr. JOHNSON of Washington. In my opinion Louis F. Post did so, and continues to do so.

The CHAIRMAN. Under what authority or practice?

Mr. JOHNSON of Washington. He finds no authority in the decision of the Secretary of Labor in the Preis case. Now, in my opinion, he creates some authority by himself and for himself in the Truss case, which case is as favorable to the alien as any that can be found among all of these cases.

Mr. RALSTON. May I interrupt Mr. Johnson just a minute to make this statement: That there is no statutory authority whatever for the Department of Justice to interfere with any immigration cases; it has injected itself into these cases.

Mr. JOHNSON of Washington. I will tell you what happened.

The CHAIRMAN. I want to ask this question: Do I understand that the Department of Justice was proceeding in immigration cases, or under the criminal statute?

Mr. JOHNSON of Washington. In the Communist cases the Department of Justice, acting under authority of Congress, gathered in these people who had signed the constitutions of this Communist and other revolutionary parties; and when it gathered them in, they found they had a large number of aliens and citizens and thereupon they turned over the aliens to the Department of Labor for that department to proceed for deportation.

The CHAIRMAN. As an aid to the Department of Justice?

Mr. JOHNSON of Washington. I didn't say that.

The CHAIRMAN. The proceeding was brought under the Statute?

Mr. JOHNSON. Here is a man who has committed no overt act under the criminal statutes; but he has signed up as a working member of the Communist Party, which took over the red wing of the Socialist Party en bloc; and the men who had been found to have signed up for these charters had the audacity to say that they did not know what they were doing. The report shows many such cases. The next report will take up the alien I. W. W. cases, among them the case of George Andreytchine, an alien anarchist, claiming to be a Tolstoyan, using the Tolstoyan brand of anarchy under which to write and speak, a young man 24 or 25 years old, who speaks three or four languages; a very pleasant and plausible fellow. He became an I. W. W. agitator in Michigan, in the copper districts of Michigan, with Gurley Flynn, making speeches and urging the use of force and resistance, which, under certain conditions, might have been

the right of an American citizen, but I contend is not the right of an alien. He was arrested under some law of the State, and when it was discovered that he was an alien he was turned over, as other cases were turned over, to the Department of Labor, or the Bureau of Immigration. He says he is an anarchist, and they used that as a charge to deport him. He is a Macedonian, and he put up a pitiful appeal that if he were deported he would be shot. I have not found an anarchist who advocates overthrow of government and destruction, who, himself, is not mortally afraid of death; not one.

This fellow got a great many people to intercede for him, and they put up the specious plea that he is being deported to avoid giving him a chance to stand trial in the State of Michigan. That appeal was so successfully made that it caught a number of Senators and three or four Representatives in Congress. And he got all kinds of people to intercede for him, among them the editor of the *Masses* and the Rev. Percy Stickney Grant. And Emma Goldman telegraphed to Assistant Secretary of Labor Louis F. Post from San Francisco on July 17, 1916, and in her telegram she says:

Deportation may prove fatal to our friend. Urge you interest yourself in the case. Special letter follows, etc.

The CHAIRMAN. To Assistant Secretary Post?

MR. JOHNSON of Washington. Yes; she wired directly to Mr. Post. He refers this to the then Acting Secretary—under certain conditions he is the Acting Secretary, as well as the Assistant Secretary, and in referring this matter he put on these words:

Referred to Acting Secretary, with suggestion that Miss Goldman's representations of fact are worthy of full credence.

Perhaps they were. He will say, when you ask him, that he was referring to questions of fact. Perhaps they were. Let us see what was going on: Most strenuous efforts were being made to keep Andreytchine from being deported. A scheme was gotten up by which he was to pay his own way to Brazil, if permitted to depart. His friends put that scheme forward for him, and these well-meaning people who put up this very argument sent telegrams by the dozen, but working below and under the well-meaning people were people who were conspiring to keep him in the country. I have the letters of a lot of them here. One from Frederick Howe, commissioner of immigration at Ellis Island, and others. One letter explains the plan of these conspirators to keep Secretary Wilson engaged in making speeches, and war work, and other things, so that Mr. Post would take care of these cases.

MR. RALSTON. I think if a statement of that kind is made, the document should be produced.

MR. JOHNSON of Washington. I have the documents here.

In the course of time—they secured delays for a few weeks, and then Mr. Andreytchine was released, and was not deported. Now, what happened to Andreytchine? Why, just what will happen in a great many of the present cases; if you fail to deport them they bob again in the same kind of anarchistic and revolutionary mischief that Alexander Berkman did. This country paid a severe penalty for not deporting him on the day that he got out of the penitentiary for shooting Frick. Andreytchine's plea that he was afraid he would

have to die if he was deported; that he had consumption, and all sorts of pitiful pleas, worked, and then, the minute he failed to be deported and got his release through these anarchistic friends, Andreytchine goes right back to his work, that of agitator for the I. W. W. In the course of time he was arrested along with many others in and around Chicago, some 67 of whom were sentenced to imprisonment at Leavenworth; they were indicted in the Federal court at Chicago, and were sentenced to the Federal penitentiary at Leavenworth. Mr. Andreytchine received 20 years. Now, what happened? He is not deported, but is in the penitentiary, and then he begins to write these pathetic letters to Louis F. Post, begging that he be deported. He has discovered that being in the penitentiary was worse than deportation.

Mr. POU. He had to do a little work in the penitentiary?

Mr. JOHNSON of Washington. Yes, and Mr. Post has turned this last appeal over to the Department of Justice; I will not be positive—I have wired for the facts—but, I think, he is out on some kind of bail again; at any rate, a \$1,000 bond is mentioned in these papers, and his friends have kept up the agitation for him, and I am interested in knowing what will happen to George Andreytchine, probably a patriotic citizen of the world, but certainly an enemy of the United States.

I do not want to take too much time of the committee, but I will call attention in these letters to where they speak of Mr. Wilson as "comrade." I can not ascertain whether it is the President or the Secretary of Labor.

Mr. SABATH of Illinois. Do you expect to put in all the papers in that case?

Mr. JOHNSON of Washington. Yes.

Mr. SABATH of Illinois. You do not withhold any?

Mr. JOHNSON of Washington. No.

Mr. SABATH of Illinois. That would include the letters from the Senators and Members of Congress; because, I think, when you mention numerous Senators and a number of Members of the House, they should be placed in the record, and not put all these Senators and Representatives in the position of writing letters that were improper, and perhaps some of these letters were pleading for due justice, and may be proper, and may do great injustice to a great many Members of Congress, or Senators, and for that reason, if you are going to introduce any letters, I believe all of the letters should go in.

Mr. JOHNSON of Washington. These are letters that were before the Committee on Immigration and Naturalization, of which Mr. Sabath is a member. It is clear to me, and must be to other Members of Congress, that the creation of a position where one man can act on the appeal of citizens of the United States, whether they be Senators or citizens in the various walks of life, in such cases as this, is wrong. Our committee has worked to that end. I said that these Senators and Representatives and others were influenced by the misstatement of facts. In most cases they simply referred the proposition to the department, but it all added to the appeal in behalf of this fellow. The main movers in the matter were anarchistic people. However, all these cases go to show a distressing situation in that department.

Mr. GARRETT. Mr. Johnson, do any of the letters from the Senators and Representatives go any farther than to ask a consideration of the facts?

Mr. JOHNSON of Washington. Oh, no; perhaps a little further—I do not want to do anybody an injustice——

Mr. GARRETT (interposing). I am sure of that.

Mr. JOHNSON of Washington. The letters assume, speaking broadly, that this man, if he were deported, would not have a chance to stand trial on some State charge; if the facts were that way, they ask the Secretary to look into the facts. That is within any Senator's right, or any Congressman's right.

The CHAIRMAN. Those letters were all in response to requests made upon the Senators and Representatives?

Mr. JOHNSON of Washington. Yes; Andreytchine, let me tell you, was an I. W. W. pet, and a prince among the I. W. W.'s, and these letters were in response to a special appeal, and that appeal was worked up and directed to the Senators, and not to the Members of the House of Representatives, and I am inclined to think some one went around and got signatures of Senators because there is one letter here signed by 15 or 16 en bloc. The thing was all worked up with great care, as I have told you. If I should name all of those that were in the plan to keep this Andreytchine in the United States you would get the names of nearly all of the leaders of those who call themselves liberals, and who are so afraid that the United States might do some act of repression against some alien who is here to speak in some foreign language, in some closed hall, or on a soap box in behalf of the Communist Party, and the red flag over everything.

Now, that I am on my feet I want to say with great frankness to this committee that no committee can go over these papers without taking weeks of time. The damage has all been done, as I said, in these cases. The Department of Justice did a service when it broke in a way this Communist Party. It was unfortunate to throw out a drag-net and bring many people into the jails, even if they were aliens, and even if they were released within 36 hours. It is still more unfortunate to hold thousands of these people for three or four months while this wrangling goes on between these two departments. I did not introduce a resolution of impeachment. I believe Louis F. Post already has been impeached as an American citizen to sit in that office by nine-tenths of the people of the United States. If I had time I would read a speech that he made in 1916 here in Washington defamatory of the United States Army. Everybody in the United States knows the type that he is; the type of mind. I have extracts from his books, and I tell you, fellow members, Mr. Chairman, and others, when Congress writes laws that anarchists shall be deported, Congress means that very thing. I had the honor to sit on the committee that wrote the law. And it must be apparent to all that under the guise of Tolstolian or philosophical anarchists, a lot of dirty devils are in the United States doing their work to urge these United States into one grand world conglomeration. It has been said there is no politics in this. There is no politics in it. In my opinion, there is not a man on the floor of the House but will cast a vote to right this

situation. Let us have immigration laws so plain all can read. Let us make it so that those people can not do in the United States what we do not want them to do against the United States and still stay in the United States. Talk about impeaching Post and letting him involve this committee until his term of office runs out. We have been in almost continuous session for seven years, and I hate by act of mine to put that arduous task on any committee of my fellow members.

Mr. SABATH. I think the chairman has asked a question as to how these cases come to Mr. Post. The Immigration Bureau under the Department of Labor has jurisdiction over questions of aliens in this country, and deportation matters.

Mr. ROSENBERG. Over deportation matters?

Mr. SABATH. Yes; the final jurisdiction is placed in the Secretary of Labor; and the jurisdiction is placed in the Secretary of Labor, and in that way they have at all times assumed jurisdiction, and do have jurisdiction as it existed by legislation.

The CHAIRMAN. The thing in my mind was this: The Department of Justice proceeded and made certain arrests; now, how did the Secretary or the Assistant Secretary of Labor get jurisdiction of the persons so arrested and get them away from the Department of Justice?

Mr. SABATH. Because of the fact that he has jurisdiction of the deportation of aliens. You can not deport American citizens and when they went out to make the arrests they did not inquire whether people were citizens or aliens; they arrested everybody, and properly so, whenever they had any evidence of wrongdoing, but as to the execution of the law of deportation, that has been placed at all times, since I can remember, in the Bureau of Immigration which is in the Department of Labor.

The CHAIRMAN. What I meant, in what way was the attention of the Bureau of Immigration or the Commissioner of Immigration called to these particular cases; were they called to his attention by the Department of Justice or did they make an appeal direct?

Mr. SABATH. That I really do not know. I know that you did desire that information, and I thought I would give that to you.

Mr. RALSTON. I think, Mr. Chairman, I can give you an illustrative understanding of just how the matter operated affecting 59 people. Complaints were made, originating probably with officials or "operatives," they call them, of the Department of Justice, to immigration officers in Boston that there were four people in Lynn who were aliens and anarchists. The immigration officials in that particular case acted as if the operatives told the truth. With the connivance of cover agents of the Department of Justice, who are stirring up these troubles in the country, the night of January 2 was fixed for the raid—

The CHAIRMAN (interposing). Mr. Ralston, now, what do you mean by saying that the agents of the Department of Justice were stirring up this trouble?

Mr. RALSTON. I mean exactly that, if you please.

The CHAIRMAN. Stirring what trouble?

Mr. RALSTON. Stirring the people and creating communist branches.

The CHAIRMAN. Agents?

Mr. RALSTON. Yes, sir.

Mr. RODENBERG. Do I understand you to say that the agents of the Department of Justice are engaged in creating communist parties?

Mr. RALSTON. Exactly that way.

Mr. RODENBERG. In what way?

Mr. RALSTON. They are charged with obtaining the confidence of the communists; they are charged with that duty, of going to their places and organizing branches of the communist parties and reporting the membership of the organizations that were formed to the department.

Mr. RODENBERG. Agents of Department of Justice organizing branches of the Communist Party?

Mr. RALSTON. Exactly.

Mr. POE. Simply doing detective work?

Mr. RODENBERG. That is going pretty far.

Mr. RALSTON. For the moment, without going into elaborate proof, for which this is not the time and place, although we will be glad to do that, I refer to the remark of Mr. Justice Anderson the other day in Boston in which he said that it did appear that the agents of the Department of Justice constituted a considerable section of the Communist Party in this country. He did not say that loosely. He said before Judge Anderson; sufficient of the facts were brought out before Judge Anderson to convince him that the same agents of the Department of Justice were those engaged in the business of manufacturing communists.

The CHAIRMAN. They were engaged in the manufacture of communists, or establishing the facts that communists already existed; there would be a wide difference?

Mr. JOHNSON of Washington. Let me say that our committee has the wording of the decision, and the testimony leading up to it, and it is not exactly as stated here.

Mr. RALSTON. The differences are so immaterial that they could not be found with a microscope. The cover agents of the Department of Justice, by way of illustration, acting under the direction of the Department of Justice arranged that where it was not otherwise understood the meetings of the Communist Party should be held on the 2d of January to facilitate arrests by the Department of Justice, and as appears from a statement in the New York Times by a representative, or an assumed representative—a reported representative of the Department of Justice stated that one of the district heads of the Communist Party was an operative of the Department of Justice.

The CHAIRMAN. Mr. Ralston, Congress, responding to a wide and very deep sentiment in the country, appropriated money to enable the Attorney General to enforce the laws and to protect this country against all enemies, citizens and aliens. Wouldn't the Department of Justice be acting within its rights in employing men to develop the fact that alien enemies, or enemies of the country, did exist in certain places? I recall an instance when car thieves in my home town who had been operating for years, and never could be detected until a detective went in there and after he suspected some one, he went in

there and stayed with them until he got their confidence, and then went with them on one of their raids, and the whole bunch was arrested. Now, is that not one of the essential ways in detecting violators of the laws?

Mr. RALSTON. It is one of the meanest ways, and when the Government—

The CHAIRMAN (interposing). It was the only way in which the people who were robbing freight cars were broken up in that country.

Mr. RODENBERG. I would see a justification for an agent of the Department of Justice becoming connected with the alien for the purpose of finding out what they were doing, but if the statement of Mr. Ralston is true that the agents have gone out and organized branches of the Communist Party, and by reason of their superior knowledge had induced others to join, I say it is reprehensible in the extreme.

Mr. RALSTON. We expect to be able to show it absolutely.

Mr. RODENBERG. I do not approve of anything of that sort.

Mr. RALSTON. This is a departure from what I arose to state. The question was how these arrests were made. I started to say that the Department of Justice made certain investigations or did certain things that convinced them that certain men were alien anarchists. That information was reported to the inspectors, and, acting on little or no proof at all, the inspector telegraphed to Washington for authority to make the arrests, and received his telegraphic instruction, and perhaps in particular instances the written warrant.

Now, to illustrate to the committee just how that worked, I will give a single instance. On the night of January 2, 59 people were arrested in the town of Lynn, Mass. For the arrest of those 59 people there had been 4 warrants issued; that is to say, only 4 among the whole 59 could by any prior information be entitled to be held. Now, how were the 59 made up? I will give this committee an illustration: Thirty-nine were arrested in a bunch at a hall at a meeting which was taking place. They were all, as it happened, Jewish bakers; they met in that hall for the purpose of organizing a cooperative bakery. Those 39 men were taken to jail there and held till the next day without warrant, without excuse, and out of the 39 men 38 were discharged, and 14 of the 38 discharged were American citizens. Now, that is just an illustration of some of the things that have happened all over the country. Eight hundred men in Detroit were arrested on a handfull of warrants. Eight hundred men and women, and the next day, or a few days afterwards—they were held, as I remember about a week—half of them were discharged with no pretense of a charge, and others have been going out ever since.

I don't know why this Red agitation goes on. I don't know whose ambition is served by its being kept up, but these are instances, and minor instances, if you please, of the way in which this country has been terrified.

I want to come to this point: The result of all these thousands of bogus and good-faith arrests—the vast majority being bogus all over the country—the result of this taking place was that the Bureau of Immigration was overslaughed with the cases that came before it, many of them containing examinations, or supposed examinations

of witnesses, or of the accused, and in cases which we will show to the committee if we have the opportunity where some agent apparently of the Department of Justice had absolutely committed forgery, in attaching, without authority, the alien's signature to the supposed examination—absolutely forgery, straight-out—with all those cases before the Bureau of Immigration it was, if you please, as I said, overslaughed, because there were not people enough to examine the cases. But the fact was that during November, December, January, and clear up until within the past few weeks very few of those men arrested under such circumstances had been discharged. Mr. Caminetti had his room piled up with these papers, and nothing done. And what did that mean? It meant that thousands of presumably innocent men were being confined in jail. Why, look at your record here. You will find petition after petition, telegram after telegram, to Mr. Caminetti, begging that he do something to remedy supposed wrongs in particular cases, and you will find those telegrams simply left in the record unanswered. And that is brought here as a reason for accusing Mr. Post.

The nonaction for months or confinement for months of innocent men, or the nonaction of the Bureau of Immigration is charged against Mr. Post. Why, there wasn't a thing done until Mr. Post—because of all the telegrams coming to him and remaining unacted upon in cases that he found afterwards—it was not until Mr. Post demanded afterwards that these cases be sent to him that there was even a reasonable amount of justice exercised in the Department of Labor, and not by Mr. Caminetti's work, but because of the confinement of innocent men, I wish to make that point on this information, if you please: Within two days after the tremendous raids throughout the country by the Department of Justice, after these attempts to alarm the people of the country—which are repeated even this morning in a childish and childlike way—after all these things were done, men were discharged because they had been arrested without the slightest justification; thousands of men were discharged almost immediately after that, because the Department of Justice had blundered in more ways than I have the right to take the time to tell you at this moment. Can you suppose, Mr. Chairman, that if all those people were voluntarily discharged before the expiration of two or three weeks, by the Department of Justice, can you suppose that there were not a tremendous number of innocent men left among those who were charged with pretended offenses? And that is just what happened.

The CHAIRMAN. But the specific cases which were called to the attention of the committee here were cases in which rather prominent aliens who were very active, and certainly on the face of the record guilty of the charges against them—Mr. Post is charged with selecting these and specifically favoring them, while these innocent people were left to remain in jail.

Mr. RALSTON. On the face of the record, Mr. Chairman, but think of the record you have got before you.

The CHAIRMAN. Well, I was referring to those specific cases that were called to the attention of the committee.

Mr. RALSTON. This morning you mean?

The CHAIRMAN. No.

Mr. RALSTON. In this document?

The CHAIRMAN. Well, the case of the Mexican, Magon, and there was another case—the case this morning.

Mr. RALSTON. I did not come here prepared to discuss those specific cases this morning, but I will refer to the Magon case for an instant.

Mr. Magon said he was an anarchist. There are people who say they are Christians—I suppose Mr. Palmer says so—he says he is a Quaker anyhow—there are people who say they are Christians, when they are as far removed from it as the average Hottentot, and there are likely to be mistakes the same way, and when Mr. Magon was examined he did not measure up to a single one of the tests which create an anarchist. He proved himself to be a quiet, orderly, properly-disposed citizen of the United States. Now, with that, what background have you got? These gentlemen ask that Mr. Magon, who has lived in this country for years, Mr. Magon who has six small American-born children, shall on their interpretation of the law be torn from his family and sent to Mexico where he knows a bloody grave awaits him. I am astonished that the Committee on Immigration with that fact staring it in the face, right on the face of the record—I am astonished that the Committee of Immigration should demand that a man should be severed from his family, that his children should be thrown out practically to be beggars, and that he should be sent to be shot, except it be on the most absolute proof, the most complete determination; and I think that when the Committee on Immigration looks over that case and properly considers it in its human bearings, as well as in its intellectual bearings on the question as to whether in point of fact he was an anarchist, I am convinced that the Immigration Committee, however prejudiced it may think it is against Mr. Post, will not rely upon such a rotten reed as the Magon case to support its structure.

The CHAIRMAN. Well, Mr. Ralston, didn't Congress define an anarchist who was an alien as a deportable person? Was there anything left in that case except to simply enforce the law?

Mr. JOHNSON of Washington. And are these anarchists going to hide behind the skirts of women and children?

The CHAIRMAN. I have seen in the courts pathetic cases where men were severed from their wives and children and sent to the gallows.

Mr. RALSTON. Mr. Chairman, you will pardon me for going back with you, in your case, I will say, about 20 years, to the time when you were a law student, and you will recall in your reading of Blackstone the illustration of the old law, I think it was, of Bologna, in Italy, wherein it said that whoever letteth blood on the streets of Bologna shall—perhaps be killed—punished at any rate—and a man fell in a fit on the streets in Bologna, and a surgeon, according to the practice of that time, opened a vein to relieve his situation, and the question was whether that surgeon opening that vein had not come under the very letter of the law, because he had let blood on the streets of Bologna; and you will recall better than I do the opinion.

Mr. JOHNSON of Washington. We want these alien philosophical anarchists to quit having fits in the United States.

Mr. RALSTON. You will recall the opinion of Blackstone on the subject. You can not stick to the letter, for the letter killeth, as we are told on very good authority, but the spirit gives life. Now, a man might deny until he was black and blue that he was an anarchist, but if his examination showed that he was in favor of violence and destruction of Government, that he believed as things are, that no Government should exist, he ought to be deported. We can not rest on the narrow description of a word, on the narrow significance of a word, unless we put ourselves on a par with the stupid authorities of Bologna, who held that that man was subject to imprisonment for the reason I have stated.

Mr. RODENBERG. Who conducted this examination of Magon that led Mr. Post to conclude that he was not an anarchist, although he admitted himself that he was?

Mr. RALSTON. Well, now, Mr. Rodenberg, I have to say that I have been more than pressed since the last meeting of the committee. I have gone over most of this and I only glanced hastily at the Magon examination and have not finished it, but my associate calls my attention to this in this connection: The immigration laws read this way, in stating the following classes of persons shall be excluded from admission to the United States: "Anarchists, or persons who believe in and advocate the overthrow by force or violence of the Government of the United States, or of all forms of law, or who disbelieve in and are opposed to organized government, or who advocate the assassination of public officials, or who advocate or teach the unlawful destruction of property."

There are your definitions, and Mr. Magon came under none of those definitions.

Mr. HOCH. Mr. Chairman, may I interrupt just a moment, since it was the Magon case that I called attention to, right upon this point? Counsel seems to rely upon the contention that the only admission in the record was the bare statement that he was an anarchist. He testified at length with reference to his beliefs; he testified that he was one of the group of people who believed the same things, among them his brother, he and his brother being associated in the publication of a paper called "Regeneration," and from the circular issued by this brother in whose belief he said he concurred, let me read again for the committee's attention particularly on this point. Here are extracts from the circular which they circulated in this country:

Government or anarchy. Brother laborers be convinced once and for all that humanity is divided into two social classes, that of the workers who produce all useful things, and that of the exploiters, who are those declaring themselves owners of land and all that comes from the hands of the workers. The interests of these two classes are antagonistic; there is no conciliation, because what benefits one of them injures the other, and for this reason there must exist between the two social classes a war to the death until the exploiting class—capitalists, bourgeoisie, proprietors, parasites, or whatever name you care to call them—disappear, and together with them will disappear the institution called government, that only exists to help the exploiting class, and the institution church that has for its object the keeping in submission and obedience of the masses, that they may not rebel against the rich and government. In order to do away with the exploiting class it is only necessary to ignore the so-called property right and take possession for the community. This done, both government and church will disappear, as they have no mission to perform. Then will anarchy have triumphed.

That is the sort of thing in which Mr. Magon said he believed.

Let me say just this one other word. It is true that Mr. Magon stated that if he was sent into Mexico he would be killed. It is purely a self-serving declaration; there is no proof that he would be killed.

Mr. RALSTON. You can not prove it until you kill him, can you?

Mr. HOCH. No; but it was merely a self-serving declaration; that if he were deported he would be killed. Any alien might escape deportation if that is all he needs to do—to say, in spite of all the evidence that he comes within the law, “if I am deported I will be killed when I get to the other country”—and then, out of humanity, in which we all believe, of course, an official must nullify the law upon a self-serving declaration of the defendant!

Mr. JOHNSON of South Dakota. I would like to ask the gentleman a question. In a case of this kind, where you say a man ought not to be deported because the chances are he might be killed, what would you advise? Would you advise that we procure an island somewhere out in the Pacific, and send this class of people there?

Mr. RALSTON. No.

Mr. JOHNSON of South Dakota. Out of the United States?

Mr. RALSTON. No. I must first demur to your premise. I did not make that statement. I said that was an element to be taken into consideration.

Mr. JOHNSON of South Dakota. Well, if those should be the facts?

Mr. RALSTON. If we are human, it is an element to be taken into consideration; if we are inhuman, it is not.

Mr. JOHNSON of South Dakota. Then if we are human, you would say that we ought to procure some place where we can deport these people to, an island or somewhere out of the United States, and let them run their own government?

Mr. RALSTON. I don't want to be quoted outside of what I said.

Mr. JOHNSON of South Dakota. You don't want to answer the question?

Mr. RALSTON. I don't want to be quoted beyond exactly what I said, that it is an element to be taken into consideration if we are human. Don't you think it is?

Mr. JOHNSON of South Dakota. Certainly; the human element must be taken into consideration.

Mr. RALSTON. Then you and I agree. What are you asking questions about?

Mr. JOHNSON of South Dakota. I believe we ought to procure some island somewhere for those people if we can not send them back to their own country. Do you agree with me on that?

Mr. RALSTON. Will you state the question again?

Mr. JOHNSON of South Dakota. I am firmly of the opinion that in cases of this kind, if there is such a question involved, so that we can take into consideration the human element we both believe in, the United States ought to procure an island somewhere in the Pacific or anywhere else where we can send these people to. Do you agree with me in that?

Mr. RALSTON. I don't believe that has anything to do with the question before the committee. I will be very glad to enter into a discussion on it. Do you believe that it enters into the question, Mr. Johnson?

Mr. JOHNSON of South Dakota. I think it does. You are appearing for Mr. Post. All I am trying to do is to get your views as representing him.

Mr. RALSTON. It is very much like asking the question whether you believe that a man should be electrocuted or hanged. I really don't think it makes much difference.

Mr. JOHNSON of South Dakota. In other words, you do not like to express an opinion on it?

Mr. RALSTON. There are some things I think that are like the difference between tweedledum and tweedledee.

Mr. JOHNSON of South Dakota. I will not insist, Mr. Chairman, that he answer the question.

Mr. KREIDER. A little while ago you said that these various documents were piled up in Commissioner Caminetti's office.

Mr. RALSTON. Yes, sir.

Mr. KREIDER. But which were not examined, and the failure of the examination of these documents kept a lot of innocent men in jail?

Mr. RALSTON. Yes, sir.

Mr. KREIDER. What was the reason, or why were these cases not investigated, and those who were known to be innocent, or would have been proven to be innocent by the examination of these papers, released promptly?

Mr. RALSTON. It was the duty of the Immigration Bureau to have passed those cases up to the Secretary's office.

Mr. KREIDER. Then, do I understand you to say that the Commissioner of Immigration, Mr. Caminetti, was derelict in his duty?

Mr. RALSTON. I don't want to be in the attitude of making any charges against him. I have simply stated the facts.

Mr. KREIDER. Have you got any reason to believe that there was an ulterior motive in that?

Mr. RALSTON. On Mr. Caminetti's part?

Mr. KREIDER. Yes.

Mr. RALSTON. I would not like to say. I think he is an honest man.

Mr. JOHNSON of Washington. It took 21 days to get the decision of the Secretary of Labor in the Priest case, and to this day we haven't got the decision of the Secretary of Labor in the communist labor cases.

Mr. RALSTON. It was only argued last week.

Mr. JOHNSON of Washington. It does not make any difference when it was argued; when were the arrests made?

Another thing I want to put into the record as far back as February 12, while these men are waiting these decisions in the cases, the order goes out to the Communist Party that members of the party when arrested are to deny that they belong to the party, and if possible deny their names, and whenever these fellows get an attorney of the type of Weinberger and Miss Reese, or whatever her name is, and all the rest of them, the first advice given to the alien about to be examined on deportation proceedings is to even deny his name—say nothing. Now, that that is all in the interest of the United States, I deny, Mr. Chairman.

Mr. SABATH of Illinois. Isn't it a fact that the Department of Immigration has frequently called our attention to the fact that they

have nowhere near enough of help in the department to be able to cope with and examine all the cases that come before them?

Mr. JOHNSON of Washington. Absolutely.

Mr. SABATH. The chances are they haven't one-third enough help to do the work that is required of them, and that is the reason of the delays. I just want to say that in justice to Mr. Caminetti and the department.

Mr. KREIDER. I want to say that I was very much interested in this statement that was made here, that in a certain hall, a number—I have forgotten the number—39?

Mr. RALSTON. Thirty-nine.

Mr. KREIDER. Were arrested, who were bakers and had met there for the purpose of perhaps agreeing on some method of procedure; I don't know what.

Mr. RALSTON. Organizing a cooperative bakery.

Mr. KREIDER. Organizing a cooperative bakery proposition. Why in a case of that kind should there be a delay of justice?

Mr. SABATH. In those cases I understand the Department of Justice itself has seen the injustice in these arrests and has released these people within 24 hours or 48 hours. Not that I approve of the action of the Department of Justice in making arrests by wholesale, but frequently they are overanxious, receiving reports from an over-anxious inspector or detective, and they will go out and make these arrests, believing they are serving the interests of the Nation. They do not try to do any wrong, but in their desire to be of service to the Nation, to eliminate all these undesirables and these criminals, they go out sometimes out of their way, and we know how it is done. But as to the Department of Immigration and these different gentlemen, I desire to call your attention to the fact that they haven't 25 per cent of the help that they need and require to properly handle and investigate these cases that come before them.

Mr. RALSTON. Mr. Chairman, the only defect in that statement—I have no doubt they have insufficient help—is this, that nowhere in the statutes is the Bureau of Immigration charged with arriving at any conclusion about these cases. The Secretary has to deport them; they don't have to examine them.

The CHAIRMAN. Would the Attorney General's office have authority after it is disclosed that these are alien enemies, and finding that there was not a probable case against them, would he have authority to discharge them?

Mr. RALSTON. To discharge them? He has no right to arrest them.

The CHAIRMAN. I mean they having been arrested in a crowd, probably, on the assumption that they were in the act of the commission of crime or something.

Mr. RALSTON. There is no warrant.

The CHAIRMAN. Well, anyhow, they were arrested, and it was disclosed that they were aliens; they by that disclosure come within the jurisdiction of the Department of Labor; would the Attorney General after that disclosure still have the authority to discharge them?

Mr. RALSTON. The Attorney General has no authority, right or jurisdiction of any kind, manner or description over a man who has been arrested for deportation on the charge of being an anarchist or any similar charge.

Mr. JOHNSON of Washington. And in the Martens case the Department of Justice was permitted to let one of its special assistants to the Attorney General sit in at Mr. Post's hearing for deportation, but to ask no question and to say no word.

Mr. RALSTON. But from beginning to end the Attorney General's office has projected itself into these affairs, has undertaken to run these things, having no legal right whatever in the premises; it has undertaken to dictate to the immigrant inspectors that some poor, friendless man should be put under a \$10,000 bail, and has kept up that procedure to this day.

Now, I am going a step further, and I do it with perhaps a little hesitation. The Attorney General has demanded that any man whom he has designated for deportation should be, because of that designation, without any delay deported from the United States. To that extent has he gone in his absolute ignorance of American principles or of the rights of the citizen or American law.

Mr. POU. What is your authority for saying that, Mr. Ralston?

Mr. RALSTON. I have for authority one of the most reliable men there is in the District of Columbia.

Mr. POU. Oh, sure; you were saying here a while ago that statements similar to that should be backed up with documents.

Mr. RALSTON. Yes, sir; you give me the opportunity and I will call him now.

Mr. POU. I did not say anything about calling him now; I am calling your attention to the fact that statements reflecting in character, like the statement you have just made, ought to be immediately backed up by documentary evidence.

Mr. RALSTON. I can not back it by documentary evidence, but I can by witnesses.

Mr. POU. Won't you come across and practice a little of your own preaching?

Mr. RALSTON. I would be very glad to put the witnesses on the stand at the next meeting of this committee. I approve of that.

Mr. POU. You apparently will not catch the point. As I understood you a while ago, you made the point that statements of that kind ought to be backed up by some documentary evidence. Now, I ask you if you have got any documentary evidence to back it up?

Mr. RALSTON. In my pocket; no. If the committee will allow me to back that question up I will do it in the fullest possible manner at the next meeting of this committee.

Mr. JOHNSON of South Dakota. How? By what?

Mr. RALSTON. By evidence of not one, but of two or three men.

Mr. JOHNSON of South Dakota. Who?

Mr. RODENBERG. Who received the instructions from Mr. Palmer?

Mr. RALSTON. The men to whom Mr. Palmer made his appeal and his demand.

Mr. JOHNSON of South Dakota. Who?

Mr. RALSTON. That on his say so—if you will pardon me for not giving the names until I produce them—who made the demand that on his say so, without further investigation, the Department of Labor should deport men.

Mr. JOHNSON of South Dakota. Name your men.

Mr. RALSTON. I will produce them. That will be better than naming them.

Mr. SABATH. Was not that due to the fact that he maintained—the Attorney General maintained that he had jurisdiction, and he maintained that his department had made a close enough investigation of some of these cases, and for that reason he thought that that should suffice for the Department of Labor, and that deportation should issue?

Mr. RALSTON. If he did it on such a ground as that, it is a pure case of what you might call departmental egotism.

Mr. SABATH. I only asked you whether that is not the fact.

Mr. RALSTON. I can not tell what his secret motives and feelings were. I do not know.

Mr. RODENBERG. Certainly every man should have his day in court and have a chance to prove his innocence.

Mr. JOHNSON of Washington. The situation is here: Those who want the vicious, revolutionary, red-flag-waving aliens to stay in the United States insist that the only attempt to throw them out shall be by the little bit of a handful of investigators of the Immigration Service of the Department of Labor. These fiends of the world do not want any alien enemy deported. That is all there is to it.

Now, then, when these raids were made—I will put some further evidence on the table that I can back up—when these raids were made in one town in an Eastern State, had the orders been fully carried out, every man in that town except the mayor and the postmaster would have been placed in jail for belonging to this Communist Party, and I will make the assertion that every man in the party knew what he was doing. Every man was in that party for the purpose of destroying every property mark in the United States, every building where there is a deed, every marker stone. They know what they are doing just as certainly as can be. Now, some department of this Government must pay attention to that, or else we might just as well assume that the editor of the Masses, Emma Goldman, and people of that type, whether in high places or low, are right in saying that all the bars of entrance to the United States shall be knocked down, that there shall be no deportations, and that the United States shall sink to the level of the internationalists of the world.

Mr. RALSTON. We have already sunk, Mr. Chairman, to the level of the police government that existed under the Czar of Russia. We can not sink to a lower level than that. I hope the work of this committee—

The CHAIRMAN (interposing). I would not permit that statement to stand without challenging it. We have not sunk into such a level as that, Mr. Ralston.

Mr. RALSTON. Well, perhaps you and I have not, and the members of this committee I am sure have not, but the administration of justice in the treatment of aliens is on an exact par, if it is not below that, of the administration of justice under the Czar of Russia, only within 10 years.

Mr. BOX. I want to ask the gentleman if he is expressing the views of his client when he speaks that way?

Mr. RALSTON. The view of my client as applied to the things that have happened within the past six months under the instigation

of the Department of Justice. I would rather Mr. Post would speak for himself, but I don't think any man will come to a different conclusion with all the evidence before him.

Mr. SIEGEL. Mr. Chairman, may I just say there seems to be a mistaken idea as to the process that was followed at the time these arrests were made. The immigration law provides that a warrant of arrest should issue in each case. It appears that these 3,000 men were arrested throughout the country without the issuance of these warrants, in the first instance, as the law provides. The method has grown up of applying for a warrant by telegraph. In this case it appears that few applications along that line were made, and so these 3,000 people were taken into custody during the months of January and February. They went into the custody of the Department of Labor because all the Department of Justice agents had power to do was to turn them over to the Department of Labor.

The Department of Labor instead of proceeding as it should have done with its hearings immediately, for the purpose of determining whether there was any evidence at all to arrest these people, simply continued to hold them, and in many instances they have held many of them for five months. Then what happens in the Department of Labor? On account of the rumpus and dispute that is on between the Immigration Bureau and the Assistant Secretary of Labor, nothing is done, while these men remain in confinement. The other day Mr. Ralston, counsel for Mr. Post, stated that the Bureau of Immigration had nothing to do with the cases, and that it was solely a question for the Assistant Secretary of Labor, Mr. Post. Now, he can't blow hot and blow cold: either the Bureau of Immigration has something to do under the law in the handling of these cases and review them, or it has not. He contends that the Bureau of Immigration had nothing to do with these cases; then Mr. Post is personally and individually responsible for the detention of all of these people for months.

Now, what else has occurred? The Department of Justice having sent its agents throughout the country made certain investigations. They believed that a large number of people that they had taken into custody were those who believed in the overthrow of our Government by force and violence, and that they were all anarchists. Instead of the Department of Justice cooperating with the Department of Labor, and the Department of Labor cooperating with the Department of Justice for the purpose of freeing as quickly as possible those who were innocent and at the same time deporting those who were actually guilty of being anarchists, there ensued the mixed-up condition of affairs which now prevails, making it a three-cornered scrap wherein the Department of Justice on one side, the Department of Labor another side, and the Bureau of Immigration the third side—like a triangular fight.

Now, the expressions of opinion of counsel for Mr. Post as to what his views are must give way to the opinions of the courts. The United States District Court of New York through Judge Knox held that the word "anarchist" means anarchist. In other words, it makes no difference whether a man is a philosophical anarchist or any other kind of an anarchist, as long as there is proof that he is an anarchist, he is deportable.

The CHAIRMAN. Was that decision rendered prior to the interpretation in the Magon case?

Mr. SIEGEL. Yes; long before. The United States Circuit Court of Appeals of the second district unanimously affirmed it in a long opinion, and other judges throughout the country have followed it. No judge has taken a contrary view.

Now, as to the question as to whether a man like Magon should be deported or not, on account of his family and children, that is not a question before us to determine. Magon knew well enough when he was convicted of the offense and shipped to Leavenworth that under the law and under our statutes, since 1917, an alien guilty of such offenses must be deported. The law is there since 1917. He is a man of education and admits that he knew what he was doing.

Now, I do not for a moment condone the actions of the Department of Justice in these cases, because there have been many innocent men arrested, but what I do most emphatically protest against is that these men, innocent or guilty, should not be detained for months and months waiting until Mr. Post or the people under him determine what they are going to do with those cases.

Then again let me add this: That this business of bringing men after they have been found liable to deportation from Seattle, New Orleans, and other parts of the country to New York City, sending them over to Ellis Island and then allowing them at large without bail of any kind or description, or upon a bail of \$500 or \$1,000, when it has been established that they are anarchists or those who believe in the overthrow of this Government by violence, is doing something of commission—in other words, something is being done to make the problem, hard as it is at times, in New York City, still worse. If these men are innocent they should be returned to the places from whence they have been brought at the expense of the Government. New York City is being maligned constantly for acts of men who are actual residents of other States.

We can not go into a proposition that is going to last for months and months upon the question of hearing a large number of witnesses. This resolution did not come to this committee, may I respectfully suggest, for that purpose. It seems to me it is up to the Rules Committee to decide, is there a dispute between the Bureau of Immigration, the Department of Labor, and the Department of Justice? If that fact is affirmatively found and there is no dispute on the testimony presented here, and the admissions of counsel and others, and Mr. Ralston, to the effect that it has already been established—then the matter should properly be sent to the Judiciary Committee to determine such action as it deems wise and just in the premises.

I do not agree for a moment with the statement that the Attorney General of the United States has come to the conclusion that because he says a man shall be deported under the law, that such a person should be deported. We have had the Assistant Attorney General before us repeatedly; that has not been his attitude at all, and I do not believe that it is the attitude of any person in public life that a person should be deported simply because one man says he shall be deported, without a fair hearing, in the presence of counsel and witnesses.

I will say this, too, that the Department of Justice has been trying to be extremely fair in looking over the records before even urging deportation of a single man. I say this individually, and I repeat that the spirit of jealousy which prevails in these departments, the daily repetition of mud slinging upon one another, has simply brought, as I said the other day, injustice to the country and to the Government, and injustice to the individuals who have been arrested without right or just cause. While innocent men rot in jail, these departments are busy using the typewriters.

Mr. JOHNSON of Washington. With the result, Mr. Chairman, that of all the investigations since the 1st of January, there have been just exactly 22 deportations of the anarchistic class.

Mr. SIEGEL. And there have been 600 arrested in New York.

Mr. RODENBERG. Approximately, how many are there still in jail, Mr. Johnson?

Mr. JOHNSON of Washington. I have a letter here from Mr. Post, dated April 26, which reads:

In response to your letter of this date, I am able to supply the following information with regard to alien members of the anarchistic and similar classes against whom the department has instituted proceedings under the immigration laws since November 1, 1919.

Up to November 1, we secured certain information by resolution of the House of Representatives as follows:

1. Number of warrants of arrest issued (approximate)-----	6,350
2. Number of arrests made (approximate):	
Union of Russian Workers-----	500
Communists, etc.-----	2,500
	3,000
3. Number of deportation warrants issued: -	
Anarchists and Russian Workers-----	307
Communists, etc.-----	455
	762
4. Number of cancellations:	
Russian Workers-----	61
Communists, etc.-----	1,232
	1,293
5. Number actually deported since November 1:	
On S. S. <i>Buford</i> , Dec. 21-----	241
Others-----	22
	263

And you add that number to the total number of cases deported for anarchy and similar causes since the Burnett Act was enacted on March 5, 1917, and you have an addition of 60 to the 263, or 323.

Mr. RALSTON. That shows how very unimportant, as applied to the whole population of the United States, the law was.

Mr. JOHNSON of Washington. It shows that alien anarchists, bomb throwers, dynamiters, revolutionists, and red flaggers stay in the United States.

Mr. RALSTON. Mr. Chairman, may I say just a word in response to the gentleman [Mr. Siegel] who has just spoken? He was evidently not here earlier in the hearing when I made the statement that it was the duty of Mr. Caminetti to have forwarded these cases promptly to the Secretary's office; that instead of doing it they remained for months on his desk and in his room and were not forwarded, and therefore were not acted upon by the Secretary, but when they reached the Secretary they were acted upon with as much haste as was consistent with the matter.

Mr. TINCER. Mr. Chairman, when I was making my statement I yielded to this gentleman, and I would like to ask him one question there. Do you represent your client when you make the statement that the figures disclosed by Mr. Johnson show how unnecessary this law was?

Mr. RALSTON. I said unimportant.

Mr. TINCER. Well, unimportant.

Mr. RALSTON. Relatively unimportant when you consider the vast population of this country and the few offenders against it. If you compare that with the number of homicides in the United States, the number of robberies, the number of any other kind of offenses, you can realize how unimportant in practice, relatively, it is really.

Mr. JOHNSON of Washington. It shows to an absolute conclusion that the Assistant Secretary of Labor used every possible opportunity to avoid making deportations called for under the direction of the law.

Mr. TINCER. I think the statement is a fair disclosure of your position. A man that says the law was unimportant, of course, believes Government is unimportant and would naturally think the law was unimportant.

Mr. RALSTON. No; that is not a correct inference at all.

Before Mr. Johnson goes; Mr. Johnson has said, as I understand it, that he is willing that all of the records and testimony taken before his committee should be printed for the use of this committee. Is that correct, Mr. Johnson?

Mr. JOHNSON of Washington. All of the records which were taken in open session, or by subcommittees yet to be reported to the full committee, will be available to the public as soon as they can be printed or compiled and printed.

Mr. RALSTON. That is a very important point, Mr. Chairman. We want what was taken in the executive sessions. There ought to be nothing taken in the executive sessions which should be secret from the people of the United States.

Mr. JOHNSON of Washington. And those executive session reports, which cover only four in numbers, I believe, will be made public if it is the wish of the majority of the Committee on Immigration.

Mr. SIEGEL. Does the gentleman want the testimony taken at Ellis Island made public?

Mr. RALSTON. Anything you have got.

Mr. SIEGEL. And will the gentleman produce his so-called confidential report which Mr. Parker made regarding conditions at Ellis Island, which the Secretary of Labor declined to present, and send to our committee?

Mr. RALSTON. I will produce anything I can possibly produce.

Mr. BOX. I want to submit a statement but I will not have time to do it now, and therefore I believe I will not intrude at this time, except in view of what has been said here, to say that I think the gentleman, Mr. Ralston, is fairly representing the views and attitude of his client; and I think further that we have a situation up there that calls for some intelligent thoughtful constructive action. My limited study of the situation convinced me that Mr. Caminetti and the Bureau of Immigration are making a faithful effort to enforce

the law as they find it; that the Attorney General's Department is trying to do the same thing; that the Assistant Secretary of Labor is entirely out of sympathy with the law, has contempt for it, and is not such a man as ought to administer it.

The CHAIRMAN. The committee will assemble again at the call of the chairman, and the members of the committee will remain.

(Whereupon, at 11.50 o'clock a. m., the committee went into executive session.)

COMMITTEE ON RULES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Friday, May 7, 1920.

The committee met at 10.30 o'clock a. m., Hon. Philip P. Campbell (chairman) presiding.

The CHAIRMAN. Mr. Ralston, with respect to your motion or suggestion for formal proceedings in this committee, that has never been indulged in here. If formal action should be required that will be before another committee and under another proceeding. This proceeding is informal as you know, and proceeds in a very informal way. Upon the informal presentation of matters here, this committee arrives at its own conclusions and then makes such disposition of the matters that come before it as the circumstances seem to warrant. We are not in a position to direct any formal proceedings or charges, as it has never been the custom or practice in this committee to do so.

Mr. RALSTON. Of course, I recognize the full jurisdiction of the committee in that respect and yet I respectfully submit it would seem a fair thing to Mr. Post that those who oppose him, of their own motion, even apart from any direction of the committee, if they think they have a case against him, should formulate it in such shape that Mr. Post can meet it.

There was another motion made, Mr. Chairman, and that was that the Committee on Immigration be called on to submit everything within its power, our complaint being that it submitted to this committee only a part of the evidence we know it took; that the other evidence taken in executive session and otherwise, of which the public has had no benefit, should be laid openly before this committee and openly before the American people. I do not know whether, Mr. Chairman, you are prepared to make any reference to that motion at present, or not?

Mr. ALBERT JOHNSON. I have it.

The CHAIRMAN. The testimony is here?

Mr. ALBERT JOHNSON. Every bit of the testimony taken either in open or executive session is here. A pamphlet will be made of the I. W. W. deportation cases at the earliest possible moment, and an index is being prepared. The other hearings are four in number, two of which are the hearings of an investigator of the World Church Movement, dealing largely with matters concerning the Department of Justice rather than properly before the Committee on Immigration. The two other hearings are inquiries made of four inspectors of the Immigration Service and properly before this committee.

I would like to say, since I have the floor, that at the first opportunity the Committee on Immigration, having waited for these deportation matters to clear up, for a settlement of those cases in jail, is now waiting for this matter to clear up a little bit and then it is the intention of the Committee on Immigration, I believe, to ask Secretary Wilson and Assistant Secretary Post, Commissioner General Caminetti and others to come before the committee to be examined at length and in detail on these cases, starting with the hundred or more I. W. W. deportation cases.

The CHAIRMAN. The testimony you have already taken, whether in open session or in executive session, is already here subject to the investigation of either Mr. Ralston, Mr. Post, or any of his counsel, or the press?

Mr. ALBERT JOHNSON. Yes. I think it would be better, however (and I think this can be done to-night), if these four typewritten manuscripts were to be printed.

The CHAIRMAN. That was not testimony taken before this committee and if it is printed it will have to be printed under the direction of the Committee on Immigration.

Mr. ALBERT JOHNSON. It will be.

The CHAIRMAN. Will that be printed by the Committee on Immigration?

Mr. ALBERT JOHNSON. Yes.

Mr. VAILE. I think it should be printed before it gets out as these are the only copies of it made.

Mr. ALBERT JOHNSON. That should answer the charge that testimony of any kind whatsoever is being withheld.

Mr. RALSTON. Then, Mr. Chairman, I am very glad that the committee has finally submitted all the testimony. We will be delayed, of course, necessarily, in the presentation of what we hereafter desire to call to the attention of the committee by the fact that has not yet been printed. As soon as it is printed and in proper shape there will be no want of expedition, I may assure the chairman of the committee, as far as we are concerned.

The CHAIRMAN. Before proceeding, I want to say it is not the fault of this committee that Mr. Post has not appeared before it up to this time. The statement was made by his counsel at one of the earlier hearings that Mr. Post was very busy and counsel made the statement that it was through no discourtesy to this committee that he did not appear. Therefore, I feel that it is only just to the committee to say that it is not the fault of this committee that he has not yet appeared before it and that it was entirely unnecessary for him to make his application through the press or in the manner in which it was made.

Mr. RALSTON. Mr. Chairman, I may say there never has been any intimation from me, publicly or privately, that because of his non-appearance any blame was to attach to this committee.

The CHAIRMAN. But Mr. Post did attach blame to this committee, apparently, and issued a statement simultaneously to the press with his request to be heard.

Mr. RALSTON. I do not think Mr. Post understood it in that way, Mr. Chairman.

The CHAIRMAN. It could not have been construed in any other way, because it was so apparent. The newspaper fraternity gave me the

first notice I had that he desired at all to be heard before this committee, and within a few moments I received his communication.

Mr. RALSTON. I know the communication was left here before it reached any member of the press or they knew anything about it. It was left here before 1 o'clock on Tuesday, was it not?

The CHAIRMAN. I do not know.

Mr. RALSTON. I just want to say, Mr. Chairman, that the preceding evening a notice had appeared in the papers with reference to Mr. Post's case which would imply what Mr. Post could not accept as its just inference, and that is that the Committee on Rules proposed to take some action without his having been heard at all. Now that newspaper notice, I think, carried with it a wrongful inference; nevertheless, Mr. Post did not feel he could disregard the inference and simply neglect it and, therefore, the letter which was sent to this committee and which I should be very glad to have spread upon the records immediately before calling on Mr. Post, as I shall in a moment.

The CHAIRMAN. There is no objection to that letter being placed in the record, although I want to state in connection with it that it was wholly unwarranted on the part of Mr. Post so far as any action of this committee or want of action on the part of this committee is concerned.

Mr. RALSTON. Of course there may be the explanation it was based on the hypothesis of the newspaper statement or the possibility that the newspaper inference might be correct.

Also, I should like to put in the record the reply of the clerk of the committee to Mr. Post with reference to his appearance before you to-day.

(The letters referred to are as follows:)

MAY 4, 1920.

COMMITTEE ON RULES, HOUSE OF REPRESENTATIVES,
HON. PHILIP P. CAMPBELL, *Chairman*.

GENTLEMEN: Yesterday evening's papers report your chairman as saying, with reference to charges against me as Assistant Secretary of Labor, that there is no unanimity among the members of the Committee on Rules as to whether there shall be further hearings or the committee's report on the impeachment resolution against me shall be based on the incomplete showing already made by the Committee of Immigration and Naturalization.

I can not believe that it is seriously intended by the Committee on Rules to violate all the precedents of Congress and the spirit of American law by closing this hearing when only one side has been heard and that partially, and before service of formal charges or an opportunity to make my defense or even to be heard in my own behalf.

The following facts should, I respectfully submit, be borne in mind:

(1) No statement of any definite charge whatsoever affording a basis of action by your committee has yet been filed with it, so far as I am advised, and no witness having any personal knowledge of the facts he testifies to has yet been produced; (2) the only matter produced consists of partial reports of random cases and a limited fraction of testimony taken by the Committee on Immigration and Naturalization, important and impartial testimony which is believed to be favorable to me in its effect, being so far arbitrarily withheld; (3) a motion in my behalf to require the Committee on Immigration and Naturalization to produce all the testimony in its possession has not yet been passed upon by the Rules Committee.

More in detail I respectfully make the following suggestions:

The resolution under consideration is too vague and indefinite to form the basis of any accusation. Because of this fact my attorneys have asked those who were favoring the purpose of the resolution to be required so to formulate their charges as to make an intelligent and complete answer possible. This motion is now pending before your committee. So far as I am permitted to know, it has not yet been acted upon.

Further, the Committee on Immigration and Naturalization has placed before your committee a single volume of testimony containing the evidence of one witness who is evidently not grounded in either the facts or the law. My attorneys have asked that the remaining testimony taken by the Committee on Immigration and Naturalization should likewise be furnished to your committee. This motion appears as yet to have been unacted upon by your committee. My further understanding in connection with this matter is that much or all of the testimony so taken was received by the Committee on Immigration and Naturalization in executive session. Up to this time it has been withheld not only from your committee, but from the public, although other testimony has been published broadcast and although it contains a vast amount of information received from sources neither friendly nor antagonistic to such official action as, under my oath of office, I have been compelled to take and to which the Committee on Immigration and Naturalization objects. I submit that until this withheld testimony is produced no fair hearing of my case can be had.

Up to this time little or nothing of a truly evidential nature has been produced before your committee. The only exhibits laid before you contain, with possibly two or three exceptions, nothing save parts of the records of the Department of Labor relating to particular cases which I have officially acted upon. The conclusions which I am charged with responsibility for in such cases are not discoverable upon the records now before you. Furthermore in many instances there are included in the records before you, as if of conclusive effect, unverified statements proceeding from persons who, under the law, are not charged with their making.

I therefore respectfully request that your committee, before it proceeds further, require definite and comprehensible changes to be submitted and that the evidence so far kept secret by the Committee on Immigration and Naturalization be laid before you in open session, or that the witnesses who gave such testimony be heard openly by the Committee on Rules.

Whenever requested, I am ready to appear in person before your committee. Meanwhile, I respectfully urge that in justice to me, if for no other reason, hearings in this case be not closed without an opportunity expressly afforded for my personal appearance and for the production of witnesses on my behalf.

Before closing, it is proper that I should point out to you the fact that the Secretary of Labor, in whose place and stead and under whose instructions I have acted in immigration cases, is by law made the sole judge for the deportation or nondeportation of aliens charged with being unlawfully in the country; that as such judge, and because of defects, failure, or complete absence of proof, or for other adequate reasons, more than 1,400 warrants of arrest have been necessarily canceled by me when the cases have come finally before me for judgment; that no immigration official, whether the Commissioner General of Immigration, or another, possesses any authority in law to pass judgment in these cases; that my action as Assistant Secretary of Labor is the action of an executive branch of the Government, and that my official judgment, save for criminal violations of law, may be challenged only by impeachment.

I am, with great respect,
Very sincerely, yours,

LOUIS F. POST.

MAY 5, 1920.

Hon. LOUIS F. POST,

Assistant Secretary of Labor, Washington, D. C.

MY DEAR SIR: Confirming our conversation over the telephone this morning, will say that Chairman Campbell has asked me to notify you that the Rules Committee will have a meeting at 10.30 Friday morning, May 7, at which you will be given an opportunity to be heard by the committee, should you care to appear.

Yours, very truly,

JOHN N. FREE, *Clerk.*

Mr. RALSTON. With that preliminary, I just want to add one word: Mr. Post does not feel that any just ground of complaint against him, capable of admeasurement, if you please, by the House of Representatives, or its committee, or anybody else, has been laid before this committee. He is, nevertheless, very ready and very glad to appear before this committee. In so doing, however, I would like to

make this reservation, which, I think, will be accepted as a fair one, that if hereafter, after the labors of this committee are finished, it shall appear that anything has been submitted to this committee calling for any further comment from him, including, if you please, the matter laid before the committee this morning, Mr. Post wants to reserve the opportunity at another time to make such comments or such further testimony to this morning's testimony as may seem appropriate under the circumstances, before there should be any closing of the committee's hearings.

Mr. ALBERT JOHNSON. Let me clear that up a bit. Now, let it be understood, these four typewritten manuscripts charge nothing against Mr. Post, point out nothing against Mr. Post, insinuate nothing against him, but have only to do with the affairs of the Committee on Immigration looking to legislation. These fifty-odd typewritten pages are copies entirely of records in the Department of Labor dealing with the I. W. W. deportation cases and aliens gathered up in various parts of the country for deportation and brought to New York City and there released, either on parole or on their own recognizance or on very light bond. And I will say, it will take the Committee on Immigration several weeks to complete the pamphlet following this in an effort to ascertain what has become of a large number of those so released in New York.

The CHAIRMAN. Is that the testimony you referred to that you contemplate taking at a latter date?

Mr. ALBERT JOHNSON. Yes; we are going right along with this. Here we charge that out of a large number of cases (the exact figures are here) of aliens released in New York a year ago, after being brought across the United States at Government expense, a large number of those men released are now again arrested on additional charges in other parts of the country.

The CHAIRMAN. By the Department of Justice?

Mr. ALBERT JOHNSON. By the Bureau of Immigration. Now it is the purpose of our committee to go ahead and see why. That is this testimony [indicating]. I affirm and assert, as chairman of the committee, there is not one word in these four batches, making an insinuation, a charge or a suspicion against Mr. Post. These four have nothing to do with Mr. Post.

Mr. RALSTON. Will you make the same admission regarding the volume you have already submitted?

Mr. ALBERT JOHNSON. The volume I have already submitted is a report of a man who examined those papers.

The CHAIRMAN. That has been in Mr. Post's hands?

Mr. RALSTON. Yes.

Mr. ALBERT JOHNSON. That is a report of a subcommittee to the Committee on Immigration and available to all.

Mr. RALSTON. Of course Mr. Johnson feels with absolute sincerity that there is nothing in those volumes which reflects on Mr. Post and I accept his statement as his best judgment on the subject; but it does not at all follow that that will be the judgment of Mr. Post when he comes to examine them or of his attorneys or of this committee. They may some or all of them disagree with Mr. Johnson.

Mr. ALBERT JOHNSON. Here is a manuscript about the condition of the files and things like that but we do not present that to be a

matter to be pawed over by the Rules Committee and time taken with it.

Mr. RALSTON. I want to add just this one observation: It is the desire of Mr. Post, in presenting such matters as he may call to the attention of the committee, with your permission and that of the committee, that until his formal opening statement is completed he may proceed without question or interruption.

Mr. POW. I think that will be a matter to be determined by the committee, Mr. Chairman.

Mr. RALSTON. I submit it to the committee. It will break the continuity of the material which he has prepared. I wanted to add that immediately upon conclusion of that statement, Mr. Post will be very glad to submit to any questions that any member of the committee may desire to ask, but he does ask that favor.

The CHAIRMAN. The matter of questions by members of the committee has always proceeded here at the discretion of the committee, and those who have appeared here and who do appear and Mr. Post, will come within the regular custom before the members of the committee and if any member of the committee should, at any time, desire to ask him a question I think he should submit to the question at the time it is propounded.

Mr. RALSTON. I am simply asking the consideration of the members of the committee to the end I speak of, that I believe the committee will perhaps in the end make more rapid progress that way. We fully recognize the power of the committee as to the order of the questions, and I am appealing to their discretion and good feeling. I will ask Mr. Post to come forward.

STATEMENT OF HON. LOUIS F. POST, ASSISTANT SECRETARY, DEPARTMENT OF LABOR.

Mr. Post. Mr. Chairman and gentlemen of the Rules Committee, I wish, by way of introduction, to make a very brief statement with reference to what you have said as to my discourtesy in communicating with you through the press, and this letter that has now gone into the record. I knew some time ago—through the press—and afterwards I got the resolution myself, that as Assistant Secretary of Labor, a member of a coordinate department of the Government, I was charged with high crimes and misdemeanors and it was proposed I should be impeached. The proposition was that that resolution should go to the Committee on the Judiciary and that they should act upon it. Instead of its being sent there it was sent to the Committee on Rules. I learned those facts through the newspapers.

On the night before I sent you the letter in question, one of the newspapers stated that you had said what I indicated in the letter to you. I had never received any communication whatever from this committee or any other committee and had supposed that some kind of an invitation or suggestion or intimation would be made to me officially that I might be heard before anything was put out militating against my action as an officer of the Government.

The CHAIRMAN. May I state right there Mr. Post: The reason this committee did not notify you of its first session was that your counsel, Mr. Ralston, asked the chairman of the committee some days before any hearing was had to be notified, that he (and I think

he served formal notice upon me) was your counsel and wanted to be heard when the committee was ready to take hearings on the matter. And as chairman of the committee I, and I am sure every member of the committee, thought you were being represented by counsel and that it was not incumbent at all upon the members of this committee to go beyond your counsel to notify you of the sessions of the committee.

Mr. Post. I hope the chairman will understand me or not misunderstand me. I am not making a charge or complaint against the committee; I am explaining why I sent that letter the following day after this statement appeared in the papers, to the effect the chairman had communicated, through the newspapers, something to the effect I would not have an opportunity to be heard and that a report would be made putting aside the question of impeachment and producing a resolution of censure. I am making no charge; I am simply explaining why I sent that letter under those circumstances. That is what moved it.

Now, I pass by that, because that is of small importance at any rate, and I will ask the privilege of taking up the substance of the presentation made by the Committee on Immigration in the printed statement which I have here and to which I will, from time to time, refer as I make the explanation.

The one striking part, one striking fact regarding the statement is that whoever drafted and whoever proposed it had a very slight idea of even the procedure with reference to the arrest and deportation of aliens. So I want to state, as clearly as I can, what that procedure is and what the authority is of the different persons whose names have been brought into this controversy. The whole matter, Mr. Chairman, lies in a few words, that is, the whole background of it. In section 19 of the act of 1917, of February 5, 1917, from which I will quote—it is a very long section, but the words that bear upon this question are contained in two or three very short sentences—at the beginning of section 19 are the words “any alien.” That indicates the person who may be proceeded against. Then over on the following page, far along in the section are these words that connect up with the words “any alien”—“shall upon the warrant of the Secretary of Labor be taken into custody and deported.” That is the law, and, with one exception, which I will speak of in a moment, all the law with regard to the practice in these cases. It seems to have been entirely ignored by the Committee on Immigration.

The intervening parts in that section describe the kinds of alien that shall be taken upon the warrant of the Secretary of Labor and deported. You will observe that the entire function of deportation is vested in the Secretary of Labor. He decides whether a warrant shall issue or shall not issue and controls the examination from the beginning, except in one respect that it must be conducted by an inspector under the immigration bureau at a station. He not only controls it, but he is the only official that has any connection with it except, as I shall explain in a moment, his own direct official representative.

The Bureau of Immigration has nothing whatever to do, the Commissioner General of Immigration has nothing whatever to do with this proceedings except to act in a ministerial capacity to obey the orders of the Secretary of Labor. He, in other words, is the sheriff,

as it were, of the Secretary of Labor in these matters and nothing else, and must act absolutely under the Secretary of Labor's direction and judgment. There is no judicial power whatever vested in the commissioner general, and yet in this report that I have before me and that lies before you, the assumption runs throughout that the commissioner general is a subordinate court whose duty it is to decide these cases in the first instance, subject to the approval or disapproval of the Secretary of Labor only. That is an assumption and that is not a fact and that is not the law, and I submit the committee who presented this should have known it is not the fact and not the law before they presented such an indictment as appears here.

Now, Mr. Chairman, that is the function of the Secretary of Labor as I have described it in these warrant cases. The Assistant Secretary of Labor—his functions are prescribed in the organic act of the Department of Labor, passed in 1913. In section 2, it is provided that there shall be an Assistant Secretary of Labor and he shall perform such duties as shall be prescribed by the Secretary or required by law. Now, the duties prescribed by the Secretary are any of the departmental duties that the Secretary chooses to prescribe. Whatever he instructs the Assistant Secretary of Labor to do, the Assistant Secretary has the power and authority, and it is his duty to do, and he is the Secretary of Labor to that extent while he is performing those duties.

The authority the Assistant Secretary has under the law is prescribed by the Revised Statutes which simply give him authority to act in the place of the Secretary when the Secretary is absent or when he is incapacitated in any way, or when the office is vacant subject to interference by the President, and that is all. Those are the functions of the Assistant Secretary. So that within those limitations the Assistant Secretary is the Secretary while he is performing those functions.

Then comes what has been spoken of here as the Acting Secretary. Let me explain that. The Acting Secretary is officially the solicitor for the Department of Labor. He is an appointee of the Department of Justice and assigned to the Department of Labor, the same as solicitors are assigned to other departments. And there is a provision of the law that the President may give a solicitor authority to act for a Secretary in the absence of the Secretary and the Assistant Secretary. The gentlemen of the committee have that absolutely reversed. In the absence of the Secretary and the Assistant Secretary both, then the solicitor has power to act as Secretary.

Now, for convenience of administration, it has been assumed (to what extent in other departments I do not know), and it was the assumption and the practice when I came here, that the Secretary and the Assistant Secretary are constructively absent when they are engaged in other work; so that the solicitor may act as Secretary even when the Secretary and Assistant Secretary are physically present in the District of Columbia, because they are otherwise engaged. In that way, as a matter of convenience, the work is divided up and consequently at times the Secretary has instructed me to perform this work; at other times he has given me instructions

and authority to bring in the solicitor as Acting Secretary and to instruct him, and so we have done the work together.

The CHAIRMAN. If the acting Secretary were here now or had been here during the consideration of these cases, would he have had precedence over you?

Mr. POST. He would not; of course not. He simply acts in my absence and the absence of the Secretary, to use the language of the law, and in our absence constructively, as has been customary in the department. He has no authority over me. I am the Assistant Secretary. And only in the case of the absence of both myself and the Secretary, our absence actually or constructively, has the solicitor the power to act at all. Now, under the arrangement of convenience, at times the present solicitor and the previous one have acted in this capacity because I have been doing other things and because that has been the most convenient arrangement for carrying on the heavy work of the department which could not be carried on by the Secretary and one assistant.

The CHAIRMAN. That was the reason I asked the question; the record shows the solicitor had been doing the work that you had been doing.

Mr. POST. By the record, you mean this report of the Committee on Immigration?

The CHAIRMAN. Yes.

Mr. POST. Yes, I know it does, and that is one of the vast number of errors, of misinformation and ignorance, that that committee has laid before you; and, in some respects, at least, I shall take the opportunity to correct as I go along. So much for the functions of the Secretary, the Assistant Secretary, and the solicitor as Acting Secretary.

I might explain, further, that very soon after I came here, the question arose as to how we should sign our official titles. We consulted with the Secretary and we came to the conclusion that in order to avoid confusion in the department, I should use the title "Assistant Secretary" at all times. There are some instances in which I have to use the title "Acting Secretary" because the courts or other departments require that that shall be done, so that on the face of it it shall appear that in a case in which the Secretary personally ought to act, the Secretary is absent and I am acting for him. But, as a rule, I always signed the title "Assistant Secretary" so as to maintain a distinction between my office and that of the solicitor when acting as Secretary. That has been a rule of convenience and nothing more.

Following the functions of those officers, let me take up the procedure in these cases. I have already read to you from section 19. I read again:

Any alien—

coming within certain classes—

shall, upon the warrant of the Secretary of Labor, be taken into custody and deported.

That is the sole provision except the one to which I told you I would refer, section 16 of the immigration act, which provides that the examination of aliens arrested within the United States under this act shall be conducted by immigrant inspectors.

Now, there is no authority whatever for conducting the examinations under the Secretary's warrant of arrest except by an inspector of the Bureau of Immigration. The commissioner general has no authority; the bureau at Washington has no authority, directly or indirectly, to conduct an examination. An inspector at the station has the power, the authority, to conduct, and no more—simply to conduct the examination. The Department of Justice has no authority whatever to conduct examinations. There is no authority in connection with warrant cases whatever, except that an inspector shall conduct the examination and that the Secretary of Labor shall issue the warrant and shall adjudicate the case, shall adjudge the case, when the report from the inspector, who conducts the examination, shall be transmitted through the ministerial machinery of the Bureau of Immigration to the Secretary of Labor. And that is what the law requires. That is another phase of this matter which the Committee on Immigration or regarding which they have put in a misleading report.

The CHAIRMAN. The Commissioner General of Immigration has been reporting on these cases and transmitting the report to the Secretary, the Acting Secretary, or the Assistant Secretary?

Mr. GARRETT. The recommendation you mean?

Mr. POST. Yes.

The CHAIRMAN. That report has been approved or disapproved, as the case may be?

Mr. POST. If you will pardon me, I will try to make my statement—

The CHAIRMAN. Is that true?

Mr. POST. There has been a practice which I shall explain, of the commissioner general sending in—in his transmission—in his ministerial transmission, of assuming to be sitting as a court adjudging the case and making a recommendation and to insist on the approval of the recommendation. When I came in, as I shall explain later, in acting on those Communist cases, or all cases, for that matter, when the solicitor went away, I changed that order to conform to the law and I substituted at the end of his summary of the facts, the word "deport" and the word "cancel" and required that to be put in instead of the word "approved"; and this committee thinks—not your committee; the other committee complaining of this—because of the requiring of the word "deport" or "cancel" to be put at the end of the commissioner general's recommendation, that I did so because I did not want to approve of the Secretary of Labor's decision against the Communist Labor Party. Not only did I approve of his decision, but I have said so again and again and it happens to appear in that very record that I did that. The reason that I changed the practice from the word "approve" at the end of the commissioner general's nonlawful, unlegalized memorandum, was because I did not want to approve or to appear to approve all of the stuff that was in those memorandums. I did not want to be responsible for that.

Now, then, to get back to the misleading stuff, the misrepresentative stuff, recommendations unjustified by the evidence (and yet throughout this document that has been presented here) the commissioner general's statement of facts, and his conclusion from the

facts and his recommendation to the Department of Labor was at variance with the evidence and the evidence is not put in here. I trust that the compiler of the other contribution of documents has taken the pains to put the evidence in so that this committee or any other committee can judge whether I was deciding on the report of the evidence or whether I was merely overruling unlegalized recommendations by the Commissioner General of Immigration. Pardon me; that is a digression, brought about by your question, Mr. Chairman.

I think, perhaps, this will be better understood if I explain how it came about that the commissioner general has been sending all these years these recommendations and how this assumption has grown up that he had authority as a minor court. I can best explain that by calling your attention to two functions of the Secretary of Labor with reference to keeping out or putting out aliens from this country. The Secretary of Labor has precisely the same authority with regard to what we call exclusion cases as he has with regard to what we call expulsion cases but there is a little difference in the history of the law, the history of the statutes, and out of that little difference has sprung up this practice.

As you know, the immigration law practically began, the exclusion law and expulsion law practically began, in 1885, or about the middle of the eighties with the making of it unlawful to import labor. Big corporations in Pennsylvania and elsewhere were importing labor to defeat strikes or threatened strikes or to keep down wages and men interested in the higher-wage side succeeded in getting Congress to pass a law. It was a very mild law. It made the exclusion—it did not provide for the exclusion of aliens; it made the contracts invalid. And when that got into the Supreme Court and the right of the American Congress, the right of Congress to legislate in this way was sustained, then there came a volume of legislation of all kinds keeping out "undesirables," as the word was.

Now, the exclusion cases arise in this way: An alien comes to the port—we will say New York. He is examined. If there appears to be no objection to him, the inspector passes him on, and he goes in a long file; but when the inspector sees the alien has a disease of the eye, perhaps, or some inflammation, or the inspector gets an idea this man ought to be more carefully examined, he puts him aside and the procession goes on. The procession has a very large percentage of the incoming aliens. Others are put aside for what is called an examination before a special board of inspectors—three, I think it is—who sit in their cases, and they have a trial there. It is a secret trial. They are not allowed counsel, and they have no right to it because they have never got into this country; they are still abroad; they have not been landed; they are not domiciled in this country; they have none of the constitutional rights that the people who are in this country, whether natives or not, have, and so they have this secret hearing. And on the strength of that hearing a report of the hearing comes to the Secretary of Labor. Now, it is a hearing and not a recommendation; that is the main thing. But the recommendation of the inspection board is, of course, of great value; it ought to be, at any rate. Their recommendation comes on; the man is excluded; he must, under the law, be given notice of his

right to appeal. And if a man is not excluded one member of the board can appeal. In case of appeal by either a member of the board or the excluded alien at the port of arrival, the evidence and the statement comes through the commissioner general to the Secretary of Labor to decide that appeal.

Now, confining my attention for the moment by way of illustrating the development in this practice—confining my attention to exclusion cases at the port—originally the statute provided when the Superintendent of Immigration, who was the statutory predecessor of the commissioner general, when the Superintendent of Immigration of the Treasury Department received an appeal, he passed upon that appeal as a primary court, as an intermediate or appellate court, I would call it. The board at the station would decide to exclude the alien, let us say, and notifies the alien of his right to appeal. He then under the law would appeal to the Superintendent of Immigration, and the superintendent under that law would decide the appeal, subject to the approval of the Secretary of the Treasury. Now, that was the law. Consequently there naturally grew up the practice of the Superintendent of Immigration, as an intermediate court, to decide matters subject to approval. So he did have a quasi-judicial authority under that law; he did have the right to decide and it was his function and duty to decide subject to the approval of the Secretary.

In 1903, when the law was very much extended and passed out of the stage of a contract-labor law into its present stage of an immigration law, a provision was made in that statute which utterly changed that relation of the commissioner general as he was then entitled, to the Secretary—at first of the Treasury, then of the Secretary of Commerce and Labor and then Secretary of Labor—utterly changed that relationship. Now, mind you, before it was an appeal to be decided by the commissioner general subject to the approval of the Secretary. Now that law reads, in 1903 it was changed to read, that an appeal shall be transmitted through the commissioner at the port and the commissioner general to the Secretary of Labor—utterly disbanded that intermediate court which had been carried on by the Superintendent of Immigration; and now the commissioner general, his successor, has no more right to adjudge these cases since that law than the commissioner at the port, and the commissioner at the port has no right to adjudge them. His only function is to take the report of the special board and transmit it to the commissioner general whose function it is to transmit it to the Secretary.

The CHAIRMAN. Let me ask you: From 1903 down to within a few years ago, say 1916 or 1917, the Commissioner General of Immigration has, however, been passing on all these cases; is that true?

Mr. POST. If you will permit me, I will reach that. I would rather reach it in my own way and in order and then answer questions—if you will permit me. I suggest that respectfully; I have that in mind. I intend to develop the facts in the case and I can not do it if I am thrown from one end of my statement to the other. I respectfully ask, Mr. Chairman, that I be allowed to present it in this way.

The CHAIRMAN. The question just occurred to me.

Mr. Post. I am not making any complaint, sir; only I submit, as upon invitation I have come here, I should be permitted to state the matter in my own way and then I am perfectly willing to answer any kind of questions; so you may know yourself (and as you do not know and can not get from this evidence before you) what the law is.

Now, there had grown up, under the law, prior to 1903, the practice of making statements and recommendations and the word "approve" was written underneath and the Secretary of the Treasury would perfunctorily sign. Of course, the cases never really got a hearing and never were intended to have a hearing before the Secretary. The law changed that so that the appeal would be before the Secretary and not before any intermediate officer whose whole feeling would be that it was his function to keep aliens out. That has been the tendency. Now that practice had developed under that old law.

Under the old law, too, the expulsion proceedings had arisen. There never was any authority in law for any decision by the Superintendent of Immigration of the Commissioner General of Immigration—never was any law authorizing them to make decisions or recommendations subject to approval—so far as expulsions were concerned. But the practice growing out of the expulsion cases attached to warrant cases, and it became customary and was customary when I came into the department for the commissioner general to have cases written up and to sign them as commissioner general, recommending admission or exclusion, or whatever the recommendation might be, and the Secretary of Labor signed those memoranda, as they were called, bureau memoranda under the word "approve"; or, if he did not approve, he wrote "disapprove" or "admit" or "exclude" or whatever occurred to him as the best form of expression for the case. So that growing up out of that root I have described, the practice continued on down using the word "approved" and using these memoranda.

Now, let me say it would be very desirable indeed if we could have these memorandums written so as to rely upon them. But since years of experience in that department, doing this work more or less at different times, has convinced me that we were not getting a fair statement of the facts calling for our judgment on the evidence in the case, I have for a long time tried to bring about some change; but the matter was not in my hands—I was doing other work. For two years, I think, or more, I have done immigration work only as the solicitor happened to be absent; so that it was not a matter I cared to take any part in. But when the solicitor, as Acting Secretary, was complaining to me, as he did again and again, of the holding up of these cases as they came into the ports—held up for weeks, held up for months—keeping men locked up so that the commissioner general could pass judgment on those cases as they came up in these files, with respect to which he had not a particle of authority in the law to pass judgment, I then for the first time made a thorough investigation of this relation of the commissioner general to the Secretary of Labor in these two kinds of cases and advised the solicitor to take a new ground in the matter. It was only a few days afterwards—I do not know whether he would have taken my advice or

not; I should not have undertaken to give him instructions—when he went away I undertook to clear the commissioner general's room of the scores upon scores, and scores upon scores of accumulated records that had come up from the different stations under those warrant cases—men arrested back in the fall still in jail in March and no hearing had; or at any rate, no action. A hearing had; yes. Hearings had come to the bureau. The bureau, instead of transmitting as the law requires should be done, and transmitting promptly, was holding back in order that they could set clerks at work investigating the files and making memorandums and, after that, the commissioner general would sit by and wait until he would have time (you will find some evidences of that in this record), wait until he could have time to pass judgment in reference to something in regard to which he had no legal power to pass any kind of judgment at all, instead of passing them up to the Secretary to act upon as the law requires. And so I changed it.

One of the first things I did after the solicitor had gone away was to send into the commissioner general to remind him of two things. I sent him a copy of an order that the Secretary of Labor had made three years ago requiring him, when he had any objection to a decision by the Assistant Secretary, or the Acting Secretary, to make his objections in writing through official channels to the Secretary, and that had not been done. So I sent that back and then I gave him an order to change the ending of the memorandums from "approve" or "cancel"—"approve," if they would recommend deportation or, once in a while a cancellation, once in a great while—and I changed it from "approve" to "cancel" or "deport," whichever conclusion they came to; and then I, acting as Secretary, would decide whether to follow their advice or not. And I found it necessary to, and I did—rather than take their advice for granted, rather than take these statements that were made as true expositions of the evidence—go to the evidence myself and see how it compared. And when I went to the evidence, I found what this committee would have found if they had gone to the evidence instead of copying the commissioner general's unauthorized and nonlawful memorandums, that the evidence and memorandums did not tally; and that whereas a man might very well, in a judicial capacity, if he judged by the commissioner general's memorandum, decide a case one way, yet, looking at the evidence he would decide it another way.

I think I have answered your question, Mr. Chairman; at least I intended to, regarding the custom of using these memorandums. It continued on down after 1903.

The CHAIRMAN. Until—

Mr. Post. Until I changed it.

The CHAIRMAN. What was that date?

Mr. Post. I changed it early in March.

The CHAIRMAN. Early in March of this year?

Mr. Post. Early in March. Then I, having first looked into the law of the case—

The CHAIRMAN. During all of the years when they were deporting aliens on account of physical disability, the commissioner general's report was taken?

Mr. Post. No, sir.

The CHAIRMAN. And it was not changed until political offenders against the Government of the United States were proposed to be deported?

Mr. Post. I object to that, sir. I understand your imputation, Mr. Chairman, but that was not done by me. I did not go by the commissioner general's recommendation in deciding cases. I did use their memorandums and made my indorsement upon them; but I went, in any case that seemed important at all, to find out whether I was getting a proper recommendation, a real recommendation, a real statement of the facts, or not—I did not take the statements on the basis of the commissioner general's recommendation. I knew how they were made; I had had experience enough in them to know what they were worth and the way he made them, so this was no change on my part except in the mere matter of transmission. So that the word "approve"—and I very often, long before that, instead of signing under the word "approve"—I very often struck out the word "approve" and made a statement on the memorandum that I was willing to sign and that I did sign. And I think that was done by others, too.

The CHAIRMAN. But the fact is that that change was not made until there were deportation cases for political offenses, rather than because of sore eyes and other diseases for which the aliens were being deported?

Mr. Post. Suppose I put it this way: The change was not made until I became thoroughly convinced, both by investigation and conferring with others, that the commissioner general had no such authority as he was assuming and changed it because I thought, by assuming that authority, he was standing as a block in the way of all the cases, whether warrant cases or appeal cases, getting to the Secretary, so that they accumulated in great batches in his office.

In that connection, I would like to make a personal statement, also. In this Immigration Committee report that has been put before you, it is stated that a man of the name of Davidge was a friend of mine; that I put him into the Bureau of Immigration in order to write cancellation warrants or cancellation recommendations. The fact about that matter is I did not know Mr. Davidge; I did not know him by name, but I had some idea of him by sight, for I used to pass him in the halls. Mr. Davidge was a conciliator directly under the Secretary. I had never known of him and, as I say, I did not know his name. When the commissioner general asked for help, because he was swamped and needed a great force, the Secretary of Labor detailed two men from the Conciliation Bureau to help him and Mr. Davidge was one of them. And all I knew of Mr. Davidge was what I learned afterwards, namely, that he was a lawyer; and a fair-minded American; he wrote memorandums on the evidence and knew what he was doing, and on which he wrote at times "deport" and at times wrote "cancel." And whenever he wrote "cancel" the record was taken from him and put in the hands of another man who was practically, if not actually, under compulsion to make a recommendation regardless of the proof of the guilt or innocence of the man. Those were among the reasons why this change was made and insisted upon.

As I say, when I took hold of this matter, when the solicitor had gone, the Communist Party cases were the main cases that came to

me. There were individual instances of anarchist cases; there were the usual supply, but they were very few, on the ordinary grounds of deportation—prostitution, or something of that kind. I do not mean deportation; I mean of expulsion—where a resident alien was arrested on a warrant for expulsion. A good deal was said in public and otherwise about the tremendous danger that we were confronting; these men, with bombs, were preparing to kill right and left. A vast deal of newspaper talk of that kind existed, as you must know (for I suppose you read the papers), although you may not have known where it emanated from; I do not, either. But I have my suspicions that what were called two-salary newspaper men were not absent in the course of this development. Now, in all the cases—

The CHAIRMAN. In the course of the development of what?

Mr. POST. In the course of the development of the newspaper publicity—the newspaper drive that was made to create a great terroristic scare in the country. The newspaper publicity bureaus, the men that take a newspaper salary and another salary to misrepresent and to put false lights on situations and to create sentiment, took advantage of the discontent that is afloat in the country to make a terror. However, that is just incidental.

The CHAIRMAN. Just in that connection, it would be only fair to state who these two-salary persons were.

Mr. POST. Oh, I am not testifying as to who they were. Don't you know, Mr. Chairman, that situation exists?

The CHAIRMAN. It has not been called to my attention.

Mr. POST. It has been called to my attention, but I could not prove a single case. I could not give the name of a single witness.

The CHAIRMAN. It is suggested to me, by whom were the salaries paid?

Mr. POST. Why, one salary is paid by the newspaper.

The CHAIRMAN. And the other by the Government?

Mr. POST. God only knows, except the man who gets it. Why, is it possible, Mr. Chairman, you have forgotten the case that arose here within the last two years of a man getting a newspaper salary and drawing an income from various sources, something like \$20,000 or \$30,000 a year besides, for no other apparent reason than to use his newspaper connection? There is not a newspaper man here that does not know it exists, whether he knows the particular facts or not. Now, I am not offering myself—

The CHAIRMAN. I must say that it is news to me.

Mr. POST. I am glad to know it is news; but you must have been asleep at some stages of the game, sir.

The CHAIRMAN. No; I think I have been awake.

Mr. POST. Your confession does not go far—

The CHAIRMAN. But I am not impressed with the truth of everything I hear.

Mr. POST. No; neither am I. If I had been I would have deported every man that the detectives arrested.

Mr. ROYAL C. JOHNSON. I would like to ask the gentleman just one question.

Mr. POST. I wish you would pardon me, sir. If you will write it down, I will answer it just as soon as I am through; but I must

insist that I shall have the chance of making this statement connectedly. If you wish to have me answer it, if you will write it down and hand it to me, I will answer it when I am through.

Mr. ROYAL C. JOHNSON. I will wait until you get through with your statement.

Mr. POST. Very good. Now, I refer to that condition because the general public must have a vision of a great conspiracy to throw bombs and all that sort of thing. Who were arrested? From the moment that the Secretary of Labor decided that membership in the Communist Party brought the member within the purview of this statute, hardly an arrest was made upon any other ground but membership in the Communist Party. The mere fact of membership in the Communist Party was all. But in all these sweeping raids over the country, in which men were arrested at midnight and taken out of their beds at 3 o'clock in the morning in their homes, without warrant, in which their houses and their persons were searched without warrant—not by the Department of Labor; I do not undertake to say by whom, but that is the fact—these were the people afterwards brought to us, great raids made upon meetings and men rounded up and taken to the police stations and a large proportion of them discharged before morning because they could not prove anything against them. With all these sweeping raids all over the country, there have been three pistols, I think it is, brought to our attention in the scores of cases that have come to us. Three pistols, two of them .22 caliber. Now, I do not know whether a .22 caliber is for a homeopathic pill or a cannon ball. [Laughter.]

The CHAIRMAN. This is not funny.

Mr. POST. I am not trying to be funny, Mr. Chairman; I am trying to be serious.

The CHAIRMAN. I was calling attention to the others. There are a good many of us here and we can not all laugh.

Mr. POST. I am not laughing; I am far from laughing in regard to all this matter. I say that two of those pistols were .22 caliber and I was saying I did not know whether that means a homeopathic pill for a bullet or a cannon ball, for I do not know anything about pistols. I never carried one in my life and never expect to. But it is a fact there was one pistol that was a deadly proposition. It was found in a suit case, and I suppose if you were to search the suit cases in the hotels of Washington, you would find in many of them deadly pistols. I do not know whether you would or not; you would not in mine. Now, there are the dangerous weapons—nothing found to show they were criminals or undertaking to manufacture anything dangerous, but simply the fact that men were members of this organization. This brought them within the law; there is no question about that, and if they were conscious members, they were members within the law. Nearly all of the cases have been cases of membership and many of them where it is almost impossible to believe that the men knew they were doing anything but going to school or going to a social club of men from their own country and of their own speech.

Now, with all these cases of membership, I think that something like 40 were men who testified they were in favor of violence for overturning the Government, either they admitted it or it was testi-

fied to; only about 40 or 50 possibly. The great number of them were simply members and nothing else.

Before I go on to explain those cases, I am going to give you the data up to the 28th of April, as furnished by the Bureau of Immigration, by way of a report of the statistics. From November 1 to April 26, the number of warrants of arrest issued were 6,350, approximately; the number of arrests made approximated 3,000; 500 of them were members of the Union of Russian Workers; 2,500 were members of the Communist Party. The number of deportation warrants issued, that is, warrants issued in consequence of the judgment of the Secretary of Labor after a hearing that the men were guilty within the law—the number of deportation warrants issued for anarchists and Russian Workers, 307; number for Communists, 455—a total of 762.

The number of cancellations—and perhaps I had better explain that. Cancellation does not mean that the Secretary of Labor has reversed anybody's decision. It has appeared in the papers—I am not so sure whether it appears here or not—statements have appeared that indicated that whoever made them thought that some adjudicating authority had decided to deport these people, and that that decision had been overruled by the Secretary of Labor or his direct representative. Cancellation means nothing of the kind. Cancellation means verdict for the defendant; nothing else. The only person who has the right to pass judgment upon the evidence has passed judgment upon the evidence, and finds that the warrant of arrest was not sustained by the evidence, and so he cancels the warrant of arrest, and that means a verdict of not guilty after a hearing. Of Russian Workers, the number of cancellations—I have given you the number of deportations—the number of cancellations—

The CHAIRMAN. Does the number of deportations include the *Buford* cases; those that went on the *Buford*?

Mr. Post. This sheet does, I think. I think this does, because this is from November 1.

The CHAIRMAN. Down to?

Mr. Post. Down to date. I will give you the rest afterwards. The *Buford* went out in December, so I suppose this statement, which runs from November 1 to April 24, includes the *Buford*. I have no doubt of it; it is so stated here. I had not noticed it. Now, the number of cancellations of Russian Workers was 61; Communists, etc.—I suppose that includes some of the anarchists without being members—1,232. Total number of cancellations, 1,293. That would be a total of deportation warrants, 762; cancellations, verdict of not guilty, 1,293. Number actually deported since November 1 on the steamship *Buford*, December 21, 241; others, 22; total, 263. The above figures are to the close of business on the 24th of April, so the bureau says, and I have signed it upon their representation; the above figures are to the close of business on the 24th instant, which was the 24th of April. So I am wrong in saying this was down to the 26th; it was down to the 24th. The 26th is the date of the letter.

The second report is from January 1 to April 28. That is the one I suppose you refer to; that would leave out the *Buford*. Communist cases, cancellations ordered—that is, verdict of not guilty—1,484; deportations ordered, 481; deferred, 45; reopened, 5; pending, 274; total, 2,289. And there is a statement here, "included in the

above are 12 Italian cases (anarchists) from New York, of which 8 have been canceled and 4 are pending," the 8 being counted though among the cancellations of 1,484 and the 4 being counted in the pending cases of 274. Communist Labor Party cases: Two ordered canceled; none deported; none deferred; none reopened; pending, 144; total, 146.

The Secretary of Labor has decided that the Communist Labor Party is not an organization the members of which can be deported for mere membership. They must be guilty of some kind of an overt act to be deported on their own action as such. In the Communist Party the mere fact of membership means deportation. In the Communist Labor Party the mere membership does not, because the organic law of the Communist Party indicates violent purpose as against the United States. The organic law itself and the pledge that they sign. The organic law and the pledge of the Communist Labor Party indicates nothing of that kind. Consequently, mere membership, the Secretary holds—and I should be very glad and I will offer right here, if you have not any objection, to put in the record the Secretary's opinion in the Communist Party case and the Communist Labor Party case.

The CHAIRMAN. That may be done.

Mr. POST. I will put both of those opinions in, so you may have an opportunity to see without hearsay, but upon the documents themselves, what the decision is. In consequence of the Secretary's decision regarding the Communist Labor Party, these 144, or whatever those cases may have amounted to—I am not sure these figures are absolutely accurate, but they are substantially so—have been canceled. That is to say, there was nothing to hold them on because they were merely cases of men who were arrested for mere membership in the party, and not for any overt act or for any speaking or believing of their own.

Then the Russian workers' and anarchists' cases included 61 cancellations, 66 deportations ordered, none deferred, none reopened, 13 pending; total, 140. The Russian workers' cases and the anarchist cases, I take it from the asterisk here, all arose prior to January 1. They arose, that is, the arrests were made, but action was taken afterwards. Then there is the total given, and I think this is the total you wish to know about, Mr. Chairman. Deported since January 1 (5 communists, others anarchist charges): To Germany 3, Scotland 2, Italy 3, Canada 1, England 1, Jugo-Slavia 3, Hungary 1, Roumania 1, Ireland 1, and Galicia 2; total, 18. These are January 1 to April 28.

Mr. POW. That was out of how many cases pending?

Mr. POST. Out of how many cases ordered deported, don't you mean?

Mr. POW. Yes.

Mr. POST. The number of cases ordered deported was 547.

Mr. POW. You spoke of twenty-odd there that had been ordered deported, as I understood, from some time in January. What I wanted to ask you was how many cases were before you for deportation. You must have had a docket before you?

Mr. POST. No; I do not have the docket; the docket is kept in the bureau. I have given the figures. Cancellations ordered (they do not count in your question); deportations ordered, 547, since the 1st

of January. Deported, 18. That is what you wish to get at, I imagine.

The CHAIRMAN. For my information, what is the next step after the deportation is ordered until the deportation takes place? Who executes that order?

Mr. POST. That is the commissioner general's function, under the direction of the Secretary.

The CHAIRMAN. He executes the order?

Mr. POST. He is the executive officer of the Secretary for this purpose and he executes the order. When he gets this—this is sent to him; I do not mean this [indicating]; I mean the judgment of the Secretary in the case, whether the man is guilty or not guilty. If he is not guilty, it is the duty of the commissioner general to release the man. If guilty, it is his duty to see he is deported—all subject to the direction of the Secretary of Labor.

The CHAIRMAN. Now, why have not more than 18 out of these 500 and odd cases been deported?

Mr. POST. Because we do not know how to swim them across, Mr. Chairman. We have to get passage for them.

The CHAIRMAN. Is it because of the want of facilities?

Mr. POST. So the commissioner general informs me, and so I believe, although I have not gone into the details especially. That was not my function, except as a supervisory officer. But the commissioner general informs me that is the reason they were not deported, and I have no question in the world that is the reason they were not deported. Of this number a vast proportion are Russians or people who have to go to Russia or near by, nearly all of them, I have no doubt. I can not say that by the book. But nearly all of the cases are Russians, and it is absolutely impossible to deport to Russia at the present time. The commissioner general informed me within a few days he thought we could make arrangements to deport to Russia; to Odessa, isn't it?

Mr. RALSTON. Odessa is south.

Mr. POST. They will go up through the Mediterranean; that we will be able, and I understand there is to be a ship—

Mr. ALBERT JOHNSON. I suggest that this be kept secret.

Mr. POST. What is that?

Mr. ALBERT JOHNSON. I was hoping you would not undertake to give the exact information.

Mr. POST. Oh, it is utterly impossible for me to give it to you; I am simply telling this committee what the commissioner general tells me and what I have no reason to suppose is not perfectly true, that there is likely to be an opening in a few days to Odessa. I do not know it for a fact, but gave him the instructions as to what to do, to take steps to engage passage if it is a practical thing.

Now, Mr. Chairman, I have said that most of those cases were questions of membership. The question was a question of fact. Was the man a member of the Communist Party within the meaning of the statute. And after handling a number of cases so as to familiarize myself with the run of the evidence and handling them by reading the evidence as well as the statements that came down from the bureau, I had reached the conclusion that there was a very general similarity in these membership cases. And so I am going to ask the privilege

of reading a statement to that effect, officially, because it will express more succinctly than I could do by extemporaneous statement the impression I got, on the basis of which I laid out rules or certain principles of decision, in order that there might be as much uniformity as possible with these cases, some of which were very close to either side of the line—many of which were.

I did this in an opinion in the Truss case, in which I said:

I have described this case at length because in most, if not all, essentials it typical of a large proportion of fully 1,000 cases I have decided after hearings, in which warrants of arrest had been issued by the Department of Labor on prima facie proof of probable cause furnished by special agents of the Bureau of Investigation of the Department of Justice. The aliens are arrested and imprisoned; while imprisoned they are subjected to a police-office inquisition; an affidavit showing probable cause (upon information and belief) is thereupon presented to the Department of Labor, whereupon the Department of Labor issues its warrant of arrest, takes over the custody of the alien, as by law it is required to do, and proceeds as usual in warrant cases under the expulsion clause of the immigration law. When the hearings at immigration stations are reported verbatim in regular course to the Department of Labor, the Secretary of Labor (or his lawful representative), who is charged with the exclusive responsibility, comes to examine these records, it is found in a large proportion of the large number of cases I have examined that there is no better reason for deportation than is disclosed in the present case.

That is the Truss case, of which I will speak in a moment.

In some cases the membership is "automatic," the arrested alien having been transferred from a lawful organization to the unlawful one by vote of a group or branch of the former and without his knowledge.

I should like to stop a moment to make a personal explanation there. In the evidence the Committee on Immigration has put before you, it is virtually stated (I think it is pretty distinctly stated) that "automatic membership" is an invention of mine; that the phrase is an invention of mine and that I roll it under my tongue as I go along in the various cases, or words to that effect. The words "automatic membership" came to me through the records. Apparently some of the people who wished to deport aliens whether they were guilty under the law or not, adopted the theory that automatic membership was a kind of membership for which deportation should be adjudged. Now, automatic membership meant this, as I used it—it seemed a very good phrase and I took it from the others, accepted their phrase, which expressed it—members of the Socialist Party, a lawful organization, who had been members for weeks or months or years before the Communist Party was formed, might belong to a branch which voted to go into the Communist Party when it was formed and the Socialist might not know that vote had been taken; he might not know anything about it. But the vote had been taken and he was then called an automatic member of the Communist Party because his branch in the lawful Socialist Party had transferred its membership to the unlawful Communist Party. It was what they called automatic membership. And, Mr. Chairman, I refused to deport men against whom there was no other proof than automatic membership. I will explain that further on. To go on about the automatic membership:

In some cases he has had knowledge of the transfer but none at all of the character of the organization to which he has been transferred. In other cases he has signed applications before the existence of the unlawful organization and has never confirmed his membership by any conscious act.

Men like that I was asked to deport.

Sometimes an organizer or a friend has signed the application for him. As a rule, the hearings show the aliens arrested to be workmen of good character who have never been arrested before, who are not anarchists or revolutionists, nor otherwise dangerous in any sense. Many of them, as in this case, have American-born children. It is pitiful to consider the hardships to which they and their families have been subjected during the past three or four months by arbitrary arrest, long detention in default of bail beyond the means of hard-working wage earners to give, for nothing more dangerous than affiliating with friends of their own race, country, and language, and without the slightest indication of sinister motive, or any unlawful act within their knowledge or intention. To permit aliens to violate the hospitality of this country by conspiring against it is something which no American can contemplate with patience.

That was my view then; that is my view now, that no real American can with patience contemplate the violation of our hospitality by aliens who engage in conspiracies against this country. And equally impatient, as I said then, and say now, Mr. Chairman—

Equally impatient, however, must any patriotic American be with drastic proceedings on flimsy proof to deport aliens who are not conspiring against our laws and do not intend to. Although these are not criminal proceedings, being wholly administrative in their character, their effect upon the innocent individual who in this summary way is found to be guilty is as distressing to him and his family, to his friends and to his neighbors, as the effect of conviction for crime by regular judicial processes.

Now, having that view of the cases, I laid down these principles of decision to guide me and to guide those that might be helping me in trying to dispose of the cases and to advise them.

(1) The Communist Party of America is still within the membership clauses of the act of October 16, 1918.

That was absolute. The Secretary had decided it. I agreed with it, although it was not necessary for me to agree, because his decision is absolute. But I did agree with it. And, therefore, if a man was a member, I invariably deported him. But how was I to determine whether he was a member or not in this class of cases on the flimsy proof that was offered, most of it, or a great deal of it, a mere admission by the man himself when he had been pulled out of his bed or taken in a raid and taken to the police office, examined there without friend or counsel present, and his answers put down in form papers, papers already prepared with the questions stated and a blank for the answer to be put in. A very large number were in that class. Now, how was I to decide. In the first place, if they are members, they must be deported. Now, what constitutes membership:

(2) Personal signing of the application for membership required by the Communist Party, as quoted in the Secretary's memorandum in the Preis case [that was the case in which the Secretary decided that the Communist Party was within the law; personal signing of that application], when such signing is supplemented by circumstances indicating membership was subsequent to the creation of the Communist Party, constitutes membership within the purview of the act of October 16, 1918.

That constitutes membership. That was one of my guides. Of course, if he had signed the application before the Communist Party was formed and had done nothing after it was formed to verify that membership, it would, in my judgment, have absolved a man who was a member on such evidence as that.

(3) Signing by another with the authority of the alleged member has the same effect as personal signing [that is, where he signs himself], provided authority to sign and understanding of the purpose thereof are proved.

Authority to sign, proved authority to sign, and an understanding of the purposes was proof of membership.

(4) Applications for membership not confirmed by acceptance do not constitute membership within the act of October 16, 1918, unless it may be inferred from further facts indicative thereof.

(5) Name in a membership list is not in itself proof of membership.

That is, a mere name, not a man's signature, nothing proved but his name in a membership list, is not enough in itself.

(6) "Automatic membership" does not constitute membership within the act of October 16, 1918, unless supported by proof of individual activities or declarations tending to show knowledge of the character of the organization.

That is, when a man passed from the Socialist Party to the Communist Party, there must be something more than the mere vote of his branch to go over to the Communist Party; he must have been shown to have had some connection with the vote or to have confirmed it afterwards by his actions or declarations.

The CHAIRMAN. May I ask there: Is it the membership in the Socialist Party of the Left Wing that went into the Communist Party, or did they go into the Communist Labor Party?

Mr. Post. The Left Wing, if I understand correctly—the Left Wing made the Communist Party and left the center as the new Left Wing. In other words, if I understand the Socialists' difficulties at that time, the Socialist Party was divided into three wings—there was the Socialist Party—the Right Wing, it would be called, I suppose, in the terminology of European politics—the Center, and the Left Wing. Now, as I understand it, the Left Wing formed the Communist Party about the 5th of September and put out an organic law.

On the basis of that organic law the Secretary held that mere membership in that organization constituted a violation of this law. Of course, joining before it was formed or before that organic law was adopted could not have that effect unless the joining before the organization was followed by activities afterwards which showed a knowledge of the purposes of the organization. [Reading:]

7. Signed applications antedating the formation of the Communist Party [on or about September 5, 1919], which are not unlawful in their own terms or their legitimate implications, do not in themselves constitute proof of membership nor of application for membership in the proscribed Communist Party.

8. When membership has been withdrawn under circumstances satisfactorily establishing good faith, the accused alien does not come within the proscriptions of the act of October 16, 1918, as to membership.

In other words, the principle, "Once a member, always a member," is not true, in my judgment, in these cases, provided there is a withdrawal from membership in good faith.

9. When the accused alien appears to be a person of good general character, fit for American citizenship except for the accusation in hand, and there is reasonable doubt of his membership, the warrant of arrest will be canceled.

In other words, he will be given the benefit of the doubt when he appears to be a person of good general character and not a dangerous person, and a person fit for American citizenship, except for the accusation in hand. And there were cases of that kind, where

reputable persons came forward and testified that they did not believe that the individual knew anything about the purposes of this organization, and that they believed he was a person who would be fit for American citizenship. If that man were proved to be a member of this organization, he would have been deported, no matter how fit he might be for citizenship. But if there was doubt as to his membership in the Communist Party, I gave that man the benefit of the doubt.

10. Statements of the accused alien, whether oral or in writing, made while he is in custody and without opportunity fairly afforded him from the beginning to be represented by counsel, and without clear warning that anything he says may be used against him will be disregarded.

If there is any objection to that stand that I took, the quarrel is with the United States district judge in the West and with the Supreme Court of the United States on its unanimous decision. I based that on the principle of the case of *Re Jackson*, in the United States District Court for Montana, in which the decision was by Judge Bourquin; and on the case of *Silverthorne v. The United States*, which was an appeal taken to the Supreme Court and decided January 28, 1920. And under those decisions I guided myself in this case by the proposition that:

10. Statement of the accused alien, whether oral or in writing, made while he is in custody and without opportunity fairly afforded him from the beginning to be represented by counsel, and without clear warning that anything he says may be used against him will be disregarded pursuant to the principle *re Jackson* (U. S. Dist. Ct. for Montana, Bourquin, J.) and of *Silverthorne v. United States* (Jan. 28, 1920), as having been unlawfully obtained.

11. Exhibits seized upon the premises or the person of the accused alien without lawful process, will be disregarded pursuant both to the principle and the precise decision in *re Jackson* and *Silverthorne v. United States*.

12. In cases in which the alien is the father of children born in the United States, and therefore constitutional American citizens, and who are dependent upon and receive from him parental support, every fair doubt regarding membership within the purview of the statute will be accorded.

I was not keen, in the cases of persons who had good moral character, and who had children born here who were American citizens—I was not keen to hold that they were members of a proscribed organization, in order to break up their families, send them away, and turn their wives and their children upon the community as public charges—and there were cases of that kind that came before me. Now, that was simply a matter of doubt—

The CHAIRMAN (interposing). Yet, if there had been enough men of that kind in the country to endanger the country, the fact that they had children born here that they would have to be separated from if they were deported, would not be any mitigation of the offense, would it?

Mr. Post. Did you understand me to say anything to the contrary?

The CHAIRMAN. No; and yet we should be keen to detect those who are keen to overthrow the Government of the United States.

Mr. Post. I said I was not keen to do it on flimsy evidence, and where there was any doubt. I never refrained from doing it in any case where the membership in the organization was clear, no matter what the hardship was. I could not sleep at night for thinking of some of the cases where the men had to be sent out. They were good, hard-working and useful men, who would have made good

American citizens; but it was proved that they were members of this organization, even though they did not know what its purpose was; even though they thought they were joining an organization of men from their own country; even though they thought that they were going to school. I have deported such men, because the evidence showed that it was clear that they belonged to the organization.

I was about to say, when you interrupted me, Mr. Chairman, that when there was doubt as to whether they were members or not, I was not keen to deport men of that character under those circumstances. If this committee disagrees with me, I think I am willing that it shall make any kind of a report against me that it wishes to. I have no defense to offer. I simply state those facts; and I shall be sorry to find that any committee of this House, or this House, would consider that that was a false course for a member of the executive department of the Government to pursue upon his oath and his authority. I think that some humanity should come into the trial of these cases when there is doubt as to the guilt.

The CHAIRMAN. If there is any doubt as to the guilt, whether there is humanity in it or not, the party would be entitled to acquittal.

Mr. POST. Yes; but do you not think that the humanity of the case may enter in on the question of the evidence?

The CHAIRMAN. Not to affect the enforcement of the law.

Mr. POST. Mr. Chairman, you and I are in utter disagreement on that point, both as a matter of law and as a matter of proper administrative procedure.

Now, those are the principles that I used to guide me in the various cases.

Mr. GARRETT. May I ask you a question at this point?

Mr. POST. Certainly.

Mr. GARRETT. As I understood the reading of those principles, following it as best I could, I take it that you have applied to the administration of this law the essential and fundamental principles of criminal law. I am correct about that, am I not?

Mr. POST. If that is your assumption, I will proceed; I will answer the question. Is that the question you wished me to answer?

Mr. GARRETT. That is the question. You have applied to this matter the essential and fundamental principles of criminal law?

Mr. POST. If that is your full question I will answer it. That is the full question, is it?

Mr. GARRETT. Yes; that is the full question.

Mr. POST. I can not answer that question categorically. I will state to you what I do apply.

The Supreme Court has held that Congress has turned this whole matter over to an administrative department of the Government; that the question of whether an alien shall be allowed to continue to reside in the United States is a question of sovereignty and belongs on the executive side of the Government, and not on the judicial side. Consequently, the courts have refused, on writs of habeas corpus, to interfere with the decisions of the administrative side of the Government in these cases, unless there is an absolute lack of jurisdiction. Where there is no evidence at all to support the case of deportation, the courts will interfere on habeas corpus. But they will not review the merits of the case, because they say it is a question of sovereignty,

turned over to the executive department of the Government and they have no right to cross the line. Now, that is the attitude of the courts.

My contention is—I will not undertake to say it is the Secretary of Labor's, but I have not any doubt of it. I have followed what I believed to be his judgment as to all of these cases for the last five or six years. My contention is that when the executive department of the Government is the absolute judge of whether a man shall remain in this country or not, and the courts will not interfere, we should see to it that no injustice is done to the man. If he has lived here 10 or 15 years, he has a domicile here, he is entitled to the protection of our Constitution, of our laws, and we should be all the more careful in judging these cases, because he has no redress in the courts when our administrative judgment is given.

And, therefore, I say that there are principles of the criminal law which ought to be applied by the administrative department of the Government, unless there is the strongest reason, in each individual case, for not applying them. And that is the reason—not that I am applying absolutely criminal law to administrative process, although I think the principles of criminal law, the protections of the criminal law, ought to be accorded; yet I know that we can not accord them as criminal law. But I can take from the criminal law its humane, its just, its American, its constitutional principles of protection to the liberty of the citizen, and apply it when I am acting for the executive department of the Government. And I doubt if the Senate of the United States will condemn that attitude.

Mr. GARRETT. My question was not asked with a view to entering into any controversy with you upon the proposition. I simply desire to know definitely your mental attitude concerning it.

Mr. POST. That is my mental attitude. Having found that the fate of the man is in the hands of the executive department of the Government if there is the slightest scintilla of what may be evidence, I consider that we should be all the more careful; I consider that we should not apply to cases involving human rights the rules exclusively that would apply to property questions under administrative process. Administrative process is a very dangerous institution for a country like ours to adopt with reference to personal liberty; and it is pretty near time that some check was put upon its development in so far as it affects the rights of personal liberty.

And I may say to the chairman that I did not discover this method with the coming in of the communist cases. I discovered it six or seven years ago, when I found the same kind of administrative process applied to helpless men, sometimes by their associates or their competitors in business, in order to put them out of the country by an administrative process in reference to which they could have no appeal to the courts.

So that I say—I will emphasize that—I have not adopted the criminal procedure, or the criminal law. I have drawn from the criminal law its principles which recognize the rights of the individual, and especially his right to a fair trial, to a fair decision as to whether he is guilty or not, before he is penalized in any way. And to send a man who has been here 10 or 15 or 20 years—to take him away from his family and send him out of the country on an administrative process warrant, a mere police warrant, until it gets

to the Secretary of Labor, is to penalize him and to penalize him in a very drastic and very un-American way.

Mr. GARRETT. Would it interfere with your line of thought if I would ask you one other question?

Mr. POST. I am perfectly willing to have any fair questions asked.

Mr. GARRETT. In view of the fact that Congress, in the enactment of this law, saw fit to make it an administrative and not a judicial function, do you think that would be worthy of any regard by those who are charged with the duty of enforcing the law?

Mr. POST. Well, that depends upon one's view of the situation. For myself, I do not see how Congress can compel the executive department of the Government to do anything more than execute the laws that it passes. If Congress should alter this law, for instance—

Mr. GARRETT (interposing). Perhaps I did not make my question quite clear. What I meant to ask was—

Mr. POST (interposing). Well, you did not mean to cross the line, then, between Congress and the Executive?

Mr. GARRETT. I am not entering into any inquiry upon that at the present time.

Mr. POST. Then I misapprehended you.

Mr. GARRETT. My question was this: Congress has passed this act; it has made it administrative; and it has put it in the hands of executive officers to enforce, and has not referred it to the courts?

Mr. POST. Yes, sir; that is correct.

Mr. GARRETT. I should say that it was a fair presumption that Congress intended, in the passage of that act, irrespective of the difference between the rights of aliens and the rights of citizens under the Constitution of the United States, to eliminate the rules that would be applicable in court.

Mr. POST. In other words, the United States Government—because this is the exact point—when a complaint is made against a man under this law and the case comes before the Secretary of Labor, he must deport the man, whether the man is innocent or guilty? You did not mean that?

Mr. GARRETT. No; nor did my inquiry, I think, fairly indicate any such mental attitude upon my part.

Mr. POST. That is the issue, however; that is the issue; I think that your question does indicate that you are drifting away from the issue. The issue is: Not whether those who violate the law shall be deported, for we are deporting them; we are ordering them deported; but whether those who have not violated the law shall be deported.

And then comes the question between the man who clearly has and the man who clearly has not—the man who is on that border line where the judge, the executive officer, if you please, decides on which side of the line he falls. And when it comes to that kind of a case doubts arise in the case; and I submit that then we can fall back upon the various bases for decision that I have indicated.

Now, I am going to take up some cases that have been commented upon. There are a great raft of cases here [indicating Immigration Committee report in Mr. Post's hand], which are only partially reported. The evidence is given in only two cases; the commissioner

general's memorandum is given in pretty nearly all—the memorandum from the officer who represents the Secret Service that made the arrest; they are all given. But the evidence in the case, the only document on which we have any right to make a decision, is omitted, I think, from all the cases except two in that document that I am now referring to.

And several cases have been spoken of. Now, I can not take the time, and do not intend to take the time, to go through all of those papers, but I am going to take up seriatim the cases regarding which the most—I was going to say, "violent," I will say, "vigorous"—condemnation has been put out through the press.

The first of those cases is the one in which I have embodied the rules which I have just read to you. That is the Truss case.

Mr. Chairman, I sent last night to get the Truss case, but I did not get it. I am going to ask permission (and I will provide the copies for the purpose and submit them to any verification that the committee desires) to put into this record the evidence in the Truss case.

I refer you to page 9 of the report of the hearings before the Committee on Immigration, which has been put into your record. You will find there that in the Truss case there is an introduction in large type which is quite immaterial. Following that, there is the statement and opinion of the immigrant inspector at the port. It is a very carefully constructed opinion; the man is a responsible man; he is a man that I respect; his superior is a man that I respect. I disagreed with him when I came to look at his memorandum and compare it with the testimony. And I find here [indicating] a long memorandum prepared for the Commissioner General of Immigration by the man who is described on page 9 as my friend, whom I planted on the commissioner general. The word "planted" is not in there—but whom I thrust upon the commissioner general.

I have already told you that this man Davidge, whom I did not know—the Secretary detailed him and one other man to assist the commissioner general, at the commissioner general's request. This man, afterwards, I did know. He told me of his experiences; that whenever he recommended cancellation, the recommendation was taken away, and somebody else was appointed to write up the case. I learned from him that he had written an opinion in the Truss case.

And so I sent to the commissioner general, after the case had waited for a good while—I sent him this letter:

The case of Thomas Truss has been called to my attention, the inspector's report having been received February 14, six weeks ago, and no decision having yet been rendered.

I might say that this letter was dated April 2. That man, if he had not been on bail, would have been in jail all of that time; there was that long delay in taking up the case. And then, I go on to say:

Upon inquiry, I find that a memorandum was prepared in this case by Walter D. Davidge, whom the Secretary had detailed to such work in these cases. But his memorandum is not on the file.

Please send me Mr. Davidge's memorandum by bearer, so that I may consider it before acting upon the case. If the memorandum he dictated has not yet been transcribed, kindly instruct the stenographer to transcribe it at once, and give it to me to-day.

I addressed that to the commissioner general, and a memorandum came back with the commissioner general's initials, which reads in this way:

Mr. Lyons, please comply with the foregoing instructions. Expedite.

Mr. Lyons is a man in the Bureau of Immigration through whom these cases pass, and whose recommendations were sometimes useful and sometimes not.

Now, that is put into this record that is now before you.

The immigrant inspector's report—Mr. Davidge's opinion prepared for the commissioner general which was not signed by him; my memorandum—not a particle of evidence in the case is there [indicating]. But my memorandum and my decision are put face to face with the memorandum of the inspector at the port, who had no legal authority whatever to make a recommendation. It is a convenience for him to do so, a convenience to me and a convenience to us all; but he had no authority in law to make it, and neither had the commissioner general. But the evidence, the one thing that was involved, the one thing that you will need if you are going to look into these cases and come to a fair conclusion about them, was left out of here [indicating]. And so it is in, I think, every case that is in this record that is now before you, except in two cases, I think—there may be more; I do not think there are.

Now, I am going to ask leave to put the evidence in that case into your record. May I have permission?

The CHAIRMAN. Is it in this record?

Mr. POST. No; it is excluded from this record.

Mr. JOHNSON of Washington. Allow me to interrupt you for a minute. This evidence in this book was copied from the records of the Department of Labor, the Committee on Immigration not being permitted to take the papers out of the building; it was copied by the Committee on Immigration at great expense. The Committee on Immigration had that copied over there, and was debating about the advisability of printing it. There is the testimony in this and other cases which was taken from the department records, at an expense to the Federal Government of \$250. And it was the intention—

Mr. POST (interposing). Will you permit me to do the testifying at this moment, Mr. Chairman? I submit that the chairman of that committee has had full time to speak, both on the floor of the House and before this committee. I am offering to put the evidence in which they have excluded from their printed report, so that you could see the evidence in this case.

Mr. JOHNSON of Washington. We are willing to put it in.

The CHAIRMAN. I am inquiring if that evidence is available.

Mr. JOHNSON of Washington. That evidence is available, through the Committee on Immigration having had copies made of it in the Department of Labor, in a small space with not sufficient room for the stenographer to work. Suppose this committee was told that the evidence was down there, and they could go and get it; it is like looking for something in a library; there is a large mass of documents there; and if you would go there to look for it you would see how much time it would take you to copy off the evidence in any case.

The CHAIRMAN. Mr. Post, do you have the evidence in that case?
Mr. POST. Of course, it is under my control.

The CHAIRMAN. And do you want to submit it?

Mr. POST. I want to submit it. I am asking you to allow me to submit it.

The CHAIRMAN. And you have copies of it, have you, Mr. Johnson?

Mr. JOHNSON of Washington. We have copies of it.

The CHAIRMAN. Well, I do not want to duplicate the publication of that evidence. Is it contemplated that it will be published in your report, Mr. Johnson?

Mr. JOHNSON of Washington. I do not know whether we will want to publish the evidence in dozens of cases. We are going right ahead preparing them now. We hope that Mr. Post will come before our committee on the Truss case.

Mr. POST. Mr. Post has been ready to come before your committee for six months at least.

Mr. JOHNSON of Washington. Well, you have been hanging fire for weeks on the decisions of these cases.

The CHAIRMAN. What I want to know is whether this shall be published in this record or not.

Mr. POST. I want this published in your record, Mr. Chairman. I have had experience enough to know that the best way is for me to offer it in evidence before your committee, and then I know that you have got it before you.

Mr. JOHNSON of Washington. Our committee has no objection whatever to that.

Mr. POST. I am glad to know that your committee has no objections.

Mr. JOHNSON of Washington. We have not any objection—just so that it is printed in only one place, and will not require this committee to do any copying in the Department of Labor.

Mr. POST. I am not asking you to do any copying.

The CHAIRMAN. All that we want to avoid is having it published twice.

Mr. POST. And all I want is to see that the evidence on which the Secretary of Labor acted is put into your record and not left out in this fashion.

The CHAIRMAN. It will be inserted in the record.

(The testimony referred to is as follows:)

UNITED STATES IMMIGRATION OFFICE,
BALTIMORE, MD.,
January 20, 1920.

Record of hearing in the case of Thomas Truss, under department warrant No. 54860/67, dated January 9, 1920.

Appearances: A. R. Archibald, examining inspector; Niles, Wolff, Barton, and Morrow, represented by Chester F. Morrow, George S. Yost, and W. H. Niles, counsel for alien; Gerard Alexander, interpreter (sworn); Rev. Paul Fox, interpreter for alien; Harry Friedman, stenographer.

To the alien:

Q. Are you Thomas Truss?—A. Yes.

Q. Can you understand English?—A. I understand English.

Q. I have here a warrant for your arrest, dated January 9, this year, issued by the Acting Secretary of the Department of Labor. Do you understand what I am saying?—I do not understand very good.

(Warrant of arrest read to the alien through the interpreter and the meaning and purport thereof explained.)

Q. Do you understand that?—A. I understand that.

Q. Under this warrant I am delegated to give you a hearing to enable you to show cause why you should not be deported in conformity with law.

(Warrant of arrest shown the counsel for alien. Gerard Alexander sworn by Inspector Archibald. Alien, being first duly sworn, testified as follows in reply to questioning, all questions and answers in English, except those noted as having been put through the interpreter:)

Q. What is your right name?—A. Thomas Truss.

Q. What is your age?—A. My age is 33.

Q. Where were you born?—A. In Poland.

Q. Whereabouts in Poland?—A. It was Lublin Gubernia, and Cholm is the city.

Q. Are you a Russian or a Pole by race?—A. Pole.

Q. Are you married?—A. Yes.

Q. What is your wife's name and age?—A. Helen Truss; age, I forget the age; about 27 or 28.

Q. When did you arrive in the United States and at what port?—A. Baltimore City; it was in 1907.

Q. What was the name of the vessel and name of the line?—A. Cassel, North German Lloyd Line.

Q. Were you married then?—A. No; I was married, 1912.

Q. Under what name did you come; the same name as you have now?—A. The same name.

Q. Have you ever gone by any other name or names?—A. No.

Q. What did you do in Russia?—A. I used to work in a store and was grocery and wine and everything, and I worked there a while and I find my friend who keep the restaurant and he told me I am the cook and he understand the keep the writing. Then you come to me and I keep records for the account and you going to work with me and we going to have good job and I had that restaurant and I worked in the restaurant.

Q. Where was that?—A. In Russia, Volyhnia Gubernia.

Q. Can you read and write Polish?—A. Yes.

Q. Can you read and write Russian?—A. Yes.

Q. Can you read and write English?—A. Not very good.

Q. Can you read and write in any other language?—A. No.

Q. Have you been in the United States since 1907, all the time?—A. Yes.

Q. Have you lived in Baltimore all that time?—A. All that time in Baltimore.

Q. When were you married?—A. 1912.

Q. Where do you live?—A. I used to live with my father-in-law and then we live 1617 Bank Street when I married.

Q. Where do you live now?—A. I live now at 513 South Wolfe Street.

Q. What have you done in this city?—A. I used to work—when I came to the United States or the present job, you ask me. I last time work—

Q. What are you doing now?—A. Schloss Bros., presser, coat presser.

Q. What wages did you average a week or month?—A. I been working a long time. I used to work for Grief Bros. before, and I had \$24 a week and then I asked a raise and they give me a dollar raise and I ask raise again and they said don't be hurry and you get raise by steps and I quit down there and I go to Schloss Bros. and was down there they organized shop by the Amalgamated Clothing Workers and I get better wages than I used to have in Grief Bros. Then I get \$31 first week, then I get raised after.

Q. How much do you make now?—A. \$40. Then I supposed to get \$6 for week workers, then I made \$46.

Q. Have you any children?—A. Yes; three.

Q. What are their names and ages?—A. My daughter, Annette, she is 6 years old; boy, he is, Teofil, he is 4 years of age, and I had one who is dead and last one is Tedius, aged 7 months.

Q. Do you own your house?—A. No.

Q. Do you rent it alone or is some other family in there?—A. I rent it, three rooms I got, I live two years already there.

Q. Have you ever declared your intention to become a citizen of this country?—A. Yes.

Q. In what court?—A. It was in the city court.

Q. Where is your first paper?—A. I didn't get it because I went down there to make application for the citizenship—I went down there and I don't remember the day and the month, I got to remember when I came, for that purpose I didn't receive the paper.

Q. When did you make this attempt?—A. About seven or eight years.

Q. Have you tried since to find out?—A. I tried to find out.

Q. Don't you know you could find out right in this office?—A. Somebody told me that I find out in this office, but I did not have time because I had to spend the time working.

Q. On what day were you arrested?—A. I was arrested the 7th of January.

Q. And were you questioned on the following day by an agent of the Department of Justice?—A. There came three policemen, was Lecheski (phonetic) and two more, and they came that I shall go to the station house on Bank Street, and they only ask me something. They told me that I shall give the explanation what they give me questions and I said all right. I go right away, and I go and they take me to the Bank Street station house, and the sergeant ask the policemen what for you want him and he say Doyas, that is what I hear. Then they locked me up for all night. Next day Lecheski came and said nobody was here, and my wife doesn't know where I am and I was until 11, I don't eat nothing, sit there all night, and Lecheski I told please to go my wife and tell her please get me breakfast.

Q. Wait a minute. I asked you if you were given an examination; is that so or not?—A. Yes.

Q. Were you taken into custody and later had this warrant served on you, that I have had read to you this morning because of your supposed connection with an organization called the Communist Party of America? Do you belong to that organization?—A. I used to join down there, but I not belong no more because that organization no longer exists, this what I join, because it didn't have so many members and that organization gave out.

Q. When did you join the Communist Party of America?—A. It was about June or July.

Q. Last year you mean?—A. Yes; 1919.

Q. What particular branch did you belong to?—A. It was—I don't remember the branch—it was an organizer meeting and that time I joined.

Q. You mean an organization meeting?—A. It was a mass meeting.

Q. Where was this mass meeting?—A. I could not remember the date.

Q. Where was it held?—A. About that time when I joined.

Q. Who addressed it?—A. It was a speaker—Pinski.

Q. He came here from Chicago, didn't he?—A. I heard he was from Chicago; he was in many cities going around.

Q. Didn't you make arrangements to get him to come to Baltimore?—A. When I heard that he come Polish speaker, then I was in the meeting, in the organization, the union, and the union tried to have a speaker for the economic question to the organization, the industrial amalgamated, and I heard that and we engaged him for one time to have a speech by the organization industrial and he was down there and spoke for us, for the organization union.

Q. What organization are you talking about now?—A. Amalgamated Clothing Workers.

Q. What had Pinski to do with the Amalgamated Clothing Workers?—A. He had a speech about this organization.

Q. What organization?—A. The Amalgamated Clothing Workers—the union. I am chairman from the amalgamated and he was down there and I was the chairman and I told him that you speak about the union organization, and he was speaking about the things, the union organization principles.

Q. This mass meeting at which Pinski was the speaker was held in the I. W. W. Hall—A. It was first—

Q. Was it held in the I. W. W. Hall?—A. It was the first meeting Polish home. It was the first meeting down there and he had a speech for the Amalgamated Clothing Workers first time, and after, next day, he was supposed to have meeting in the I. W. W. Hall on Eastern Avenue and Broadway.

Q. Were you there at the meeting at the I. W. W. hall?—A. After this meeting, when he was talking about the amalgamated mass meeting, then I went out, after I came from work, and I met him outside, and he say he is going to have a meeting down there, and I was down there to this mass meeting.

Q. That was in the I. W. W. hall?—A. Yes.

Q. Did he advise the Polish people to form a branch of the Communist Party of America?—A. He had a lecture from first beginning, when the people was not so civilized and they start find out the shoes and they used the animal skins, how they find out better to practice that this skin where it very weak and how to have comfort on the feet, and how they find out this shoes come better and

better and have all the time fixed better until the time that we get such kind of shoes that we have now.

Q. Please answer my question. Did he advise the Polish people to form a branch in this city of the Polish Communist Party?—A. Yes.

Q. Was that later formed, that branch?—A. Started to form, but never was formed.

Q. Did you sign or have an application made for membership in the Communist Party of America?—A. No; not this.

Q. Did you understand my question? Did you sign an application or have an application made by some one else?—A. Somebody else write it.

Q. I show you one bearing your name and address and ask you if you signed it?—A. I didn't write this; this is not my writing.

Q. Who was it signed your name to that card, Truss?—A. It was Pinski.

Q. Wasn't it Marosz—your friend Marosz—who was secretary of your branch and who signed all the application cards?—A. Maybe he. This was not officially organized for a while, and he was elected by Pinski and some few people that he shall be temporary secretary for that time, and he supposed to attend the secretary's job because didn't was nobody else.

Q. Is that Marosz's writing; you are familiar with Marosz's writing?—A. I don't know his character, how he write.

Q. What is the meaning of that Polish word, the name of the branch, "Przys-tozs," which appears on the reserve of the application card?—A. I don't know; I could not read that.

Q. I will ask the interpreter what it means.

A. (By interpreter). Future.

Q. This application card in your name shows that it was presented to the branch September 5 and approved by the branch September 14; what branch is that?—A. I don't know, I didn't attend regular meetings.

Q. For the sake of the record I will read the printing that follows the application for membership in the Communist Party. "The undersigned, after having read the constitution and program of the Communist Party, declares his adherence to the principles and tactics of the party and the Communist International; agrees to submit to the discipline of the party as stated in its constitution, and pledges himself to engage actively in its work." Application for membership in alien's name is placed in the record and marked "Exhibit A." I show you membership card in the Communist Party of America, affiliated with the Communist International, Polish Branch, Baltimore, Md., bearing your name and address, the date of your admission as September 5, 1919, No. 2, and indorsed by A. Marosz, financial secretary, with his address. Is that the card that you carried around with you?—A. This card I have in my house. It was laying in my desk.

Q. When did you get the card?—A. This first stamp, this is about October.

Q. Where did you get it; who gave it to you?—A. It was Marosz who gave it to me.

Q. He was made secretary of your little branch?—A. Yes; he was temporary secretary.

Q. Who was made permanent secretary?—A. They told him that somebody got to be secretary to attend this organization when we have a meeting. We never have so many members when we have a meeting; then he was nominated and he get that secretary when it be branch.

Q. Who was made permanent secretary?—A. Marosz.

Q. How much dues did you pay?—A. Those two months.

Q. Did you also pay an initiation fee of 50 cents?—A. Yes; it was to join.

Alien's membership card shows initiation stamp, 50 cents, in the space for September, and two canceled dues stamps for the months of October and November. Alien's membership card referred to placed in the record and marked "Exhibit B."

Q. Where was that branch, the Polish branch of the Communist Party of America, organized? I mean in what particular hall?—A. It was when we had the mass meeting; same hall what I told you before.

Q. Where is that I. W. W. hall?—A. Eastern Avenue and Broadway.

Q. And where did they hold their later meetings?—A. They supposed to have the same hall, but they came and didn't been many members and they don't had no meeting; just came and speak that we have the organization; in the organization not many members and we were talking about maybe speaker come again. If he don't come we give up and we gave up. We didn't know what to do in this organization.

Q. Were you one of the organizers?—A. No.

Q. Were you one of the organizers?—A. No; Pinski was organizer.

Q. Pinski was the man from outside who advised the Poles to form this branch. Were you one of the active Poles who got members to come in?—A. No; because I was in that mass meeting, he see that I was the chairman from the Amalgamated meeting and he told that I should come to this meeting that we were going to have, and he asked me where is that hall and I told him, and I go there with him.

Q. I have here a small book with a blue cover, the membership book of the Polish Branch of the Communist Party, Baltimore, Md., found in the possession of Andrew Marosz who was also arrested a few days ago. From his own testimony and yours, this Marosz was secretary of the organization. I find your name on page 2, with your address, with the notation in Polish probably of certain months and certain payments. Will you look at them and say if it refers to the payments you have made?—A. I don't know what this means. He write my name, 513 South Wolfe Street; but this here, I don't know what he writing there.

Q. How many members were there in your branch, the Polish branch?—A. I could not remember about, it was a few, very few.

Q. Ten or twenty?—A. Five or six, something like that, I could not remember how many because I never been secretary. I saw when they came together it was three, four, sometimes five, like that.

Q. I will read you the names in this book. See if you know the men. Marosz, Francis Ruspindowski, A. Jorgielski, Solomon Klocz, J. Omielemicz, S. A. Mioduro, A. Urzynski, Cz. Kazimirski, and Felix Siemierz. Do you know these nine names read to you as members of the Polish Branch of the Communist Party?—A. I heard about them; I don't know them good.

Q. Do you know whether they are members of the Polish Branch of the Communist Party?—A. I heard that they join. That have been Marosz, was myself, and was Ruspindowski but those people I know before this was organized. I don't know how they stand in this organization.

Q. Now, your small local was affiliated and connected with the city central committee, was it not, the city central committee of the Communist Party?—A. I heard, but I don't know how it was connected; I ain't sure.

Q. Who was the delegate from your local to the city central committee?—A. It supposed to be delegate Klocz or, I don't remember, Marosz, I don't know for sure.

Q. Marosz, in his testimony the other day in this office, said that you told him that he would have to act or should act as delegate to this city central committee; is that true or not?—A. I don't told him because it was at that time when we was talking together. It was nomination, this nominate him, or this was this people, that people nominate this or this, but I don't know who it turned to it. There was nomination only by those people who came together.

Q. You mean the people in your branch nominated a member who was to be the delegate to the city central committee?—A. Yes; because they was asking for the delegate to the city central committee. It was a question whether we shall be represented down there. We tried to settle but we don't have no good meeting; then we tried to have some kind of delegate to understand what for they want a delegate and we don't know nothing about this.

Q. Whom did you send as delegate?—A. I guess Marosz was down there.

Q. Now, Truss, do you have to guess about it, do you or do you not know that Marosz was the delegate?—A. I am not sure.

Q. How long have you known Marosz?—A. Just about six months, six or seven months, like that.

Q. Did you tell him to act as secretary of the Polish branch of the Communist Party?—A. Did I tell him?

Q. Yes.—A. I could not remember if I told him; it was at that time we was needed secretary, and was appointed secretary from those groups who was present; and I don't know who appoint him and who told him that he shall be secretary, I don't remember that.

Q. Did you attend any meetings of the city central committee?—A. I don't think I did that.

Q. Try to remember, did you or did you not?—A. No; I don't been down there. I never have been down there in the city central committee.

Q. Did you hold any office in your Polish branch of the Communist Party?—A. What kind of office?

Q. Well, did you hold any office?—A. I don't hold any office.

Q. Were you an officer of the Polish branch of the Communist Party?—A. No.

Q. Did you distribute literature advertising the meeting at which Pinski was to make an address?—A. Yes; I been chairman in that meeting what I told in the Amalgamated and I was chairman in this meeting and he told me tell the people that I go to have meeting to-morrow, and I was telling what he told that if anybody wants to go down there he was going to have a meeting.

Q. Did you distribute circulars?—A. I had the circulars.

Q. Wasn't Pinski an organizer of the Polish section of the Socialist Party?—A. Yes.

Q. Wasn't it as such an organizer that he was to address this meeting?—A. Yes; he was organizer that time and he had a speech.

Q. Wasn't it as an organizer of the Socialist Party that he was to address the meeting (through the interpreter)?—A. Yes.

Q. Do you belong to the Socialist Party or Polish section or federation of the Socialist Party?—A. Now now.

Q. Did you belong?—A. I have belong.

Q. To what local did you belong of the Socialist Party?—A. It been named Polish branch, No. 8.

Q. How long did you belong?—A. About four—about eight years ago.

Q. When did you give up your membership?—A. About eight years ago.

Q. As a matter of fact, at this mass meeting at which Pinski spoke wasn't the burden of his address the distinction he made between the Socialist Party of America and the new Communist Party that was just about to be formed?—A. He was that time and he had a lecture. Then he had a speech about something about the communists, and he spoke that long, as I understand him, and he told me that the communists shall bring all kind of big industries, mines, and railroads, like the post office, everything shall belong to the Government; that is communists; then the Government take care, and everything that it be good then, for all work for the Government.

Q. To possibly refresh your memory was this mass meeting at which Pinski spoke on August 13 last year?—A. Yes; it was August 13; I could not remember the day.

Q. Do you know Dr. Louis Hendin, of 1505 East Baltimore Street?—A. I heard he is a dentist.

Q. Do you know him?—A. I saw him a couple of time; they tell me that he is a doctor dentist.

Q. Do you know that he is the secretary of the city central committee?—A. I heard now that he has been locked up and had some kind of warrant they had for him. I heard the people talk to me that he was city central committee secretary, but until he didn't was arrested; I didn't know that he been city central committee secretary.

Q. Did he furnish you or Marosz and the other Poles with these blank application cards for membership?—A. Not me; maybe somebody else.

Q. Do you know if he furnished Marosz with them for the members of your branch?—A. Marosz had these kind of cards.

Q. Marosz testified here under oath, January 15, in his own case, and said that he went up to the city central committee a week or two weeks after the 5th day of September and got 25 application cards and 25 membership cards; that you, Truss, and Ruspindowski told him to go there and see what they said. Do you corroborate what Marosz said or do you deny it?—A. I don't tell nobody to go anywhere if I don't know myself. It would not be sensible to tell somebody to go somewhere that I don't know.

Q. Did you and Ruspindowski advise Marosz or tell him to go up to the city central committee and get a supply of cards and speak to Hendin?—A. I don't tell him. Maybe this was the meeting when we came together—when we talked. Maybe it was a suggestion like that between the people.

Q. Did you make such a motion or were you a party to such a suggestion?—A. I don't remember.

Q. What revenue did your branch, the Polish Branch, receive other than the dues paid by the various members?—A. What means revenue?

Q. What money?—A. It was money that was collected from the dues, was 50 cents to join first, then was, I guess, 35 or 40 or 45 cents a month; I don't be sure how much it was. I know was a stamp receipt for that pays.

Q. Did you receive any money from any other source?—A. No; I don't receive money from any other source. I pay my dues.

Q. Marosz, the secretary, said that you and Rupindowski obtain some literature from Chicago or Detroit, he thought from Detroit, sold them, and turned in the money, is that right?—A. It was. It was literature books; some kind that was sold. I don't remember how much money was received.

Q. You sold them?—A. I did.

Q. What were the titles of those books?—A. I can not remember; I guess it was the French Revolution.

Q. What else?—A. I received the book Socialization of the Land.

Q. What else?—A. Then was a book The Old System in Europe and the New System.

Q. What else?—I don't remember any other ones.

Q. From where did you obtain this supply of books?—A. This was sent from Chicago.

Q. From the Communist Party Headquarters on Blue Island Avenue?—A. I don't know for sure. It was a newspaper office down there. The newspaper had this book down there.

Q. What paper, the Novy Mir?—A. No; it was a Polish paper, Glos Robitniczy.

Q. Isn't that published in Detroit?—A. I think so; it was published in Detroit.

Q. You said you got the books from Chicago?—A. They say they was making it, but this Detroit they send it. They had them printed down there in Detroit and they had in paper advertising that such a kind of book they got for sale and we received those kind of book, and after we sell them we had to pay less then we pay for them and was money left that we sell them and was returned to the secretary. It was book, 15 cents, and we sell them for 25 cents, then 10 cents left and this 10 cents going to the treasurer.

Q. What treasurer?—A. To this such a kind organization.

Q. What organization?—A. It was this time that we had a temporary secretary and we gave him that.

Q. The Communist Party in Chicago?—A. No; this Polish Branch; Marosz got that.

Q. Marosz, the secretary, got 10 cents from the sale of each book?—A. Didn't was for each 10 cents; some of them had 5 cents, some of them had 10 cents and see. We buy for 15 cents, sell for 25, there was 10 cents left and he received a couple of dollars from the sale of those books.

Q. How much money did you yourself turn in from the sale of these books?—A. I don't remember.

Q. Approximately?—A. Was a couple of dollars.

Q. Did you read the Russian daily paper, Novy Mir?—A. Sometimes when I buy I read it, sometimes I buy on the stand on Alsquithly Street in the store.

Q. Are you a subscriber?—A. No.

Q. Are you a subscriber to that Polish paper, Glos Robitniczy?—A. Yes; I been subscriber.

Q. How long have you taken that paper?—A. About five or six months, like that.

Q. Isn't that the official paper in the Polish language of the Communist Party of America?—A. That paper?

Q. Yes.—A. He used to been Socialist paper, but after I read in this same paper that this thing is going to organize some kind of new organization was to be organization communist.

Q. How long have you subscribed to it?—A. Five or six months.

Q. Do you know that Marosz as secretary of your small branch sent \$7 by money order on October 13, last, to the headquarters in Chicago of the Communist Party for \$6 dues stamps and \$1 for the charter?—A. Yes; I heard that he told me that he going to send down there. I don't know if he send or not send.

Q. He told you himself that he was going to send it, didn't he?—A. I heard something like that. He tell me, I don't know if he sent it or not.

Q. Did the charter come.—A. Yes; he showed me that charter. He told me that they sent the charter from Chicago.

(At the specific request of the attorneys for the alien and in order to avoid their witnesses having to wait until the conclusion of the direct examination, certain witnesses were introduced at this juncture.)

James J. Coale, witness, being first duly sworn, testifies as follows:

By Attorney MORROW:

Q. Mr. Coale, are you American born?—A. Yes.

Q. What is your business?—A. I am a Presbyterian minister.

Q. What is your position?—A. I am superintendent of the Presbyterian Church Extension in the city of Baltimore.

Q. Do you know Thomas Truss?—A. Yes.

Q. What do you know about him if anything?—A. My personal knowledge of Mr. Truss, I confess, is rather slight. I have seen him at the St. Paul's Polish Church. I know him to be an elder, one of the church officers of that church, and have known him personally very slightly, only having seen him in that connection.

Q. Do you know anything about his social or political views?—A. Only what I have heard in the last three or four days.

Q. Without asking you to repeat what he has told you, I would like to ask this general question. Do you consider that Truss is a man who would make a good citizen in the United States?—A. I do; absolutely.

Q. Do you regard him as dangerous to the Government of the United States?—A. Not in the slightest.

Q. Or as inimical to organized government?—A. Not at all.

By Inspector ARCHIBALD:

Q. Mr. Coale, do you know anything at all about the constitution or program of the Communist Party of America?—A. I read last fall, Mr. Commissioner, of the split in Chicago between the socialists. The Socialist Party divided into three parts, but the shadings between the three groups, I do not know in detail. I have never seen the constitution of the Communist Party.

Q. How long have you known Mr. Truss?—A. I have lived in Baltimore for something less than three years and have met the men of Mr. Fox's church within that time. I have met this group.

Q. What do you mean by this group?—A. The congregation of the church.

Q. Mr. Truss has acknowledged being a member of the Communist Party of America, Polish branch, in this city. If you knew that this Communist Party of America was an organization that advocated the overthrow of this Government by force and violence, the destruction of existing forms of government, would you still say that you would consider him to be a fit candidate for citizenship in the United States?—A. I do not think Mr. Truss was familiar with the association that he is a member of, that he understood the constitution of the Communist Party, or had ever seen it. From that understanding I base my answer.

Q. If the Communist Party is such a one as I have mentioned, and which is susceptible to proof, and if Truss knowingly joined such an organization, would you still consider him a fit candidate for citizenship?—A. Naturally not, using the word knowingly.

Q. Truss, as far as you know, is a man of ordinary intelligence, or perhaps even more than the average intelligence found among the Poles of this city?—A. I should say so.

Q. Would you assume that man of his intelligence would join an organization without knowing anything of its purport and its tactics?—A. I would put it this way: I rather imagine that Mr. Truss is inclined to be a socialist. The Socialist Party has been a party recognized throughout the country, given a place on the ballot. Those graduations between socialists are not clear to a man of my intelligence—I think I am a man of fair intelligence—and my understanding of the thing—it has been impossible to get a clear statement from any of the members or others what these distinctions are, and I think a man of Mr. Truss's intelligence would be confused as to what membership of the Socialist Party or the Communist Party really meant.

Q. The literature of the Communist Party makes the distinction between the Socialist Part and theirs clear and distinct.

Witness excused.

John S. Conning, witness, being first duly sworn, testified as follows:

By Attorney MORROW:

Q. Mr. Conning, are you an American-born citizen?—A. No; I am a Scotchman by birth. I am an American citizen by naturalization.

Q. For how many years?—A. About a year and a half.

Q. How long have you been in this country?—A. About 20 years altogether, 18 years since I came to Baltimore.

Q. Up until the time of your taking out your second papers you were a British subject?—A. Yes.

Q. What is your business and profession?—A. I am a minister, Presbyterian minister.

Q. Have you an official position here in Baltimore?—A. I am superintendent of the Presbyterian Training School and have been for 17 years—16 years—and I have been superintendent of the home missions for about 8 years, up until 2 years ago.

Q. Does your work embrace the oversight of Mr. Fox's church?—A. Yes; Mr. Fox's church is under my supervision as superintendent, and I had oversight.

Q. Do you know Thomas Truss?—A. Yes; I have known him for about 10 years, since that work commenced.

Q. Is he a member of Mr. Fox's church?—A. Yes; I think he is probably one of the first members received into that church. He is also an elder in St. Paul's Church. I took part in the services.

Q. Do you know anything of Truss's social or political views?—A. Nothing directly at all. I have had no opportunity or occasion to have conversation with him in regard to his political views. I only know him in his relation to St. Paul's Church. In that connection I might be able to form my judgment in connection with his work.

Q. Have you discussed his political or social views with him in the last two or three days?—A. Yes; two or three days ago I had a conversation with him in regard to his political views.

Q. Would you regard Truss as a good man to become a citizen of the United States?—A. I should, undoubtedly.

Q. Do you regard Truss as dangerous to the Government of the United States?—A. I take for granted, from the fact that he is a member of the Presbyterian Church, that he is a good man, a man that would be worthy of citizenship. I know the minister of that church very well. I have talked with him repeatedly in regard to a great many things which are more or less intimate with the attitude of the church toward industrialism. Judging from the attitude of the minister, I should think that the people held that point of view, which is 100 per cent American.

Q. Aside from that assumption and his connection with the church, would you regard Truss as dangerous to the Government of the United States?—A. From the conversation that I have had with him in the last few days, I should say absolutely not. He has given me his own views in the matter, which are thoroughly in accord with a great many people who are socialistic in their sympathies, but who believe in the form of Government which we have and in our methods of its maintenance.

Q. Do you regard Truss as dangerous to organized government generally?—A. I should say absolutely not. If I understand his attitude, I believe that he is quite in sympathy with orderly processes in change of government, that is, he believes in the ballot and in representative government.

By Inspector ARCHIBALD:

Q. Mr. Conning, do you know anything concerning the Communist Party of America?—A. Nothing more than I have taken up incidentally, because I must keep myself rather well informed with reference to every movement and know something of the attitude of the Communist Party and the things that they stand for.

Q. What do you think they stand for?—A. As I understand the Communist Party, they believe in direct action in the establishment of government which, of course, is radical and revolutionary, and the use of force in that government.

Q. You understand they do advocate the use of force?—A. As I understand it; yes.

Q. Do you understand that they attach only secondary significance to the ballot and parliamentary form of government?—A. Yes.

Q. Do you understand that they advocate the overthrow, by force or violence, of this Government or other existing Governments?—A. I suppose so, and I take it for granted that that is their general policy.

Q. And so understanding, how would you characterize such an organization—as dangerous, or harmless and commendable?—A. There would not be any question in my own mind in reference to this. I believe that it is un-American, and that it is dangerous to well-established Government.

Q. Your friend Truss has admitted that he belongs to such an organization, and you said that the men in Mr. Fox's church are 100 per cent American. Isn't that rather inconsistent?—A. That is one of the things that I took up with Mr. Truss, because I had heard that he had been identified with the Communist Party. As I gained information from him, the situation seems like this: That some propagandist, representing himself to be in sympathy with the social benefit of the workingman, had come here and had called together a group of men, of whom Mr. Truss was one; had submitted no constitution; had not said any of the radical things that belong to the Communist Society; and had simply spoken of their desire to secure the betterment of the workingmen in that community and asked them if they would not affiliate themselves with such an organization. The situation, as I understand it, is that Mr. Truss did not know what kind of an organization it was that he was identifying himself with, and in the second place that no real organization had been formed, no constitution had been submitted and up to the present time. He has no intimate knowledge of the things that the Communist Party stands for. I understand that they received some literature, but he had not read all of the literature that had been sent.

Q. In your work in this city in the last few years, have you learned anything about the Federation of Unions of Russian Workers of the United States and Canada, another organization?—A. I have been informed through the press accounts. I have had some intimate connection with it as far as it relates to Canada and know something about what is being done up there.

Q. How do you characterize that organization?—A. I am thoroughly out of accord with those methods. I express my opinions publicly.

Q. Would you say that a man who was a member of that would be a fit candidate for citizenship?—A. I don't know enough about that to be able to say; but, speaking offhand, I should want to know.

Q. If you knew that your acquaintance, Mr. Truss, was a member of that organization, would it, perhaps, give you pause before thoroughly indorsing him as a fit candidate for citizenship?—A. As I don't know the objects of that organization, I could not very well pronounce judgment on it. Personally, I am opposed to all use of force and direct action in government. I believe in orderly government.

Q. If you knew that your friend Truss blasphemed this Government and its officials on the day of his arrest, or, perhaps I am using the wrong expression, but, at least, used words that mean the same thing, would that change your opinion at all with regard to his being a fit candidate to American citizenship and a 100 per cent American?—A. It would depend on circumstances. It would depend upon how his emotions would be disturbed. I heard a man denounce the Government because of prohibition. He said it was not a fit Government to live in; but he was temporarily a little mad.

By Attorney MORROW:

Q. Mr. Conning, I just want to clear up one point. Did you say that Mr. Truss was 100 per cent American?—A. Mr. Fox. My knowledge of Mr. Truss has been incidental. Mr. Fox I have known very intimately. I know what he stands for. I know his whole attitude. It is for that reason that I thought that his influence was along the line of the American Constitution; and, therefore, I would take it for granted that any man who had his confidence would have his sympathies.

Q. Do you know, Mr. Conning, whether or not Truss has been active in the work of St. Paul's Church?—A. Yes; he has.

Q. Mr. Conning, in answering one of Mr. Archibald's questions in regard to your opinion of a man who used language equal to blasphemy against the Government of the United States, you said you thought a man might say something tending that way under provocation. I will ask you if you would say that a man was provoked who was arrested without a warrant and detained for two days in a police station, where he was compelled to sleep upon a bench, and who had no communication—had been unable to get communication—with his family. I will ask you if you think that was provocation?—A. I should think that that would be very considerable provocation to any person.

(Witness excused.)

By Inspector ARCHIBALD:

To the alien:

Q. Truss, where is the charter of your local branch of the Communist Party?—A. I guess the secretary received it, and I guess he got it; I don't know.

Q. Was it hung up in your meeting place?—A. We didn't have any frame. It was in a bundle. He received that bundle, but I don't know how that bundle look and what kind, I didn't read. He say he had that charter and he take to get some kind of frame of glass.

Q. Marosz, you mean?—A. Yes.

Q. Did you put the advertisement in a Polish paper *Glos Robotniczy* for the meeting at which Pinski was to make the principal address?—A. I read it; it was sent by some kind of central committee and was down there in the paper that he is speaker for this Socialist Party go from this city to the other city and so and so, and I read this that he is the speaker in that particular paper, he go from city to city to speak.

Q. Then, afterwards, did you put your name on the leaflet that was distributed around town advertising the meeting?—A. I never put my name.

Q. Were you one of the committee who prepared that circular and distributed it?—A. The committee, I been from the Amalgamated that should attend this meeting for the Amalgamated, and I been in the committee and I ordered the leaflets advertising that all the members from this organization union shall come and be in the meeting because we shall have a speaker, that he is going to talk about the union organization.

Q. But this speaker was the organizer of the Polish branch of the Socialist Party?—A. He was the organizer from the Socialist Party and for this meeting he organized Socialist Party, but first he had a meeting in the union and day before he had a meeting in the union.

Q. From your daily reading or daily receipt of that communist paper, *Glos Robotniczy*, formerly the organ of the Polish setion of the Socialist Party, did you know that that Polish section along with other foreign language federations were suspended by the Socialist Party of America over a year ago because of their revolutionary tendencies and tactics?—A. There was a revolutionary tactics and was suspended. I was in favor that those Socialists who go for to be fighting like in German, you know, the Socialists to have a war with the United States, then I don't call them Socialists like that. I was against this kind of Socialists that think we shall have to fight with all the other countries. The Socialists don't believe that the country shall fight by the first people's blood. The Socialists men that they can do by easy way. They got government, they can elect and vote and what he shall represent and shall do go and he shall attend to it.

(The next preceding question was repeated to alien by the interpreter.)

A. (Through the interpreter.) My understanding why some of the Socialist branches were suspended is that some of the Socialist branches, foreign Socialist branches, had tendency to help the Germans win the war or were in sympathy with the Germans, and I agreed with the central Socialist branch and was in favor of such action of the central branch, or the main body.

Q. Now, Truss, despite what you have said before, I am asking you again if you were a delegate to or any officer in the city central committee of the Communist Party?—A. No; I not been elected and I never been.

Q. Were you elected financial secretary and treasurer of the city central committee of the Communist Party?—A. No.

Q. Do you belong to the Union of Russian Workers?—A. No.

Q. Did you belong to the Union of Russian Workers?—A. No.

Q. Did you belong to the Russian Workers' Organization?—A. Yes, I been down there.

Q. When did you join that?—A. I could not remember the date because I been down there a member of the Russian Workers' Organization. I don't know how long I belong down there. I forgot now about it. When I join and when I been member and I had the book of this organization, and if I got that book, maybe I tell you how long I been member down there, but I don't remember how long exactly I been member in this organization, the Russian Workers' Organization.

Q. You make a distinction between the Russian Workers' Organization and the Union of Russian Workers?—A. Yes.

Q. When you joined it was the Russian Workers' Organization?—A. Yes.

Q. Was that in 1917 or 1918?—A. I could not remember very good. Everything to remember for me, it is very hard.

Q. Was John Brunert the secretary of the organization you belonged to?—A. Yes.

Q. Sometime in 1918, from testimony in many cases, the Russian Workers' Organization in this city became a Union of Russian Workers, because there were several branches formed?—A. I heard it.

Q. And then in the early part of 1919 these unions affiliated with the Federation of Unions of Russian Workers of the United States and Canada; do you know that?—A. I heard that.

Q. How long did you continue to be a member after the Russian Workers' Organization became the Union of Russian Workers? [Through the interpreter.]—A. (Through the interpreter.) After the name of the organization was changed I discontinued attending the meetings or paying the dues, as I was more interested in Socialist organization of the Polish character. This was truly a Russian organization.

Q. How were you interested? You told me that you had not belonged to the Socialist Party, Polish Branch, for eight years?—A. Yes.

Q. How were you interested in the Polish Socialist branch?—A. By the paper, newspaper.

Q. Didn't you tell your friend, Marosz, secretary of your local branch, two or three months ago, that you were a member of the Union of Russian Workers, but that you were not going to attend any more until everything was quiet?—A. I don't think I told him, because it was a Russian Workers' Organization, and that time I been member and I don't go down there no more because I heard that this is not official organization.

Q. What do you mean by an official organization?—A. The Government don't like this organization.

Q. (Through the interpreter.) Did you or did you not tell Marosz two or three months ago that you were a member of the Union of Russian Workers and that you were not going to attend any more meetings until everything was quiet?—A. (Through the interpreter.) No; I didn't say that. I could not have said that as I was not a member at the time and I could not say that I would not go to the meetings, because I did not attend the meetings and I wasn't a member of that organization.

Q. Did you have any conversation with Marosz on the subject of the Union of Russian Workers at all?—A. No.

Q. Did you have a blue membership card in the Union of Russian Workers or the Federation of Unions of Russian Workers?—A. No.

Q. When did you last pay your dues in the Union of Russian Workers or what you call the Russian Workers' Organization?—A. I don't pay any dues down there.

Q. How could you have belonged to an organization without paying any dues?—A. That is why I didn't belong down there.

Q. Do you mean to say that you paid no dues in the Union of Russian Workers or the Russian Workers' Organization, of which John Brunert was the financial secretary? [Through the interpreter.]—A. (Through the interpreter.) I paid my dues in the Russian Workers' Organization several times; I don't remember exactly how many times.

Q. Can you remember the months? [Through the interpreter.]—A. (Through the interpreter.) I don't remember.

Q. Do you remember the year? [Through the interpreter.]—A. (Through the interpreter.) I was not interested in the organization. I dropped out and I don't remember the dates at all.

Q. I have here before me the book of the financial secretary, John Brunert, of the Russian Workers' Organization, which later became the Union of Russian Workers No. 1, of Baltimore, and which later was affiliated with the Federation of Unions of Russian Workers of the United States and Canada. The interpreter tells me that the first name appearing on page 169 of this book is yours in Russian, and date opposite September 30, 1917, notations of payments 25 cents October and 50 cents December. Does that refresh your memory at all?—A. I don't know who write this.

Q. I show you another item on that same page, under the heading 1918, a name which the interpreter states is yours in Russian; is that correct?—A. This is my second name, but this is not Thomas.

Q. What is it; "T"?—A. It looks like "T."

Q. Opposite that there are several notations of payments: January, 25 cents; July, \$1.95; November, \$1; December, 25 cents; totaling \$3.45. Do those items refresh your memory as to dues you may have paid in that organization and how long you may have belonged?—A. I guess so.

Q. I show you an item on page 170, same book, a name which the interpreter states is yours, under the year 1919, an item opposite showing that you paid \$1 in March. Does that in any way refresh your recollection as to when you made another payment?—A. At that time, I guess, I don't think I paid any more. I didn't pay any more.

Q. How do you know you did not pay? Right along you said you had no recollection of the year or years?—A. I don't think that this is the regular time when I stopped being a member.

Q. What do you think was the regular time when you stopped being a member?—A. I should guess it was about 1918, or something like that.

Q. Who do you think would pay \$1 for your dues in 1919?—A. I don't know.

Q. Did you pay them?—A. No.

Q. I show you here a card which the interpreter states bears your name, organization of Russian workers, September 30, 1917, Baltimore, Md., and containing Russian writing which the interpreter says means the same thing, and ask you if that is your card?—A. This was my card. I received it in a meeting, but I don't know how they marked this because I don't have any money from them that I going to pay or something like that. They gave me that back, but I don't think that I am a member down there, see, then I don't pay. I guess that \$1 I owe.

Q. This card has three or four stamps on the inside, March 1, 1919. Do you know what that means?—A. I guess I owe that because they gave me that; I shall pay, but I didn't have no money to pay and I have that card and I don't think I have to pay.

(NOTE.—Membership card referred to is placed in the record, marked "Exhibit C." The book of the financial secretary, John Brunet, Union of Russian Workers No. 1, from which notations of items have been read, is not placed in the record because of its need in this office in other and similar cases, but is retained in the immigration office.)

Q. The Department of Justice states in a note on an envelope before me that certain papers were taken from the desk in the front room of the second floor of your house by Special Employee J. E. Sainsbury. I show you one, a receipt dated October 10, 1919, in your favor from the Workers' Defense Union, 435 South Broadway, Baltimore, Md., for \$2.50, for sale of 25 buttons, signed T. S. Wetter, secretary-treasurer, and ask you what it refers to?—A. This was buttons for help our members, the Amalgamated Union was a few members, our members who were locked up and they been members—they got locked up because they been members of the Union of Russian Workers organization and we, or local 100, send the delegate and want to find out how they stand, for what purpose they locked up, and the defense union been organized during the May Day and I go down there and get the buttons to sell and I get those buttons and sell it and the money I give to them and they give me the receipt.

Q. What interest had your organization of clothing workers whether or not members of the Union of Russian Workers had been arrested? [Through the interpreter.]—A. [Through the interpreter.] They were also members of the Amalgamated Clothing Workers.

Q. Is the man who signed this, T. S. Wetter, also the secretary in Baltimore of the Industrial Workers of the World? [Through the interpreter.]—A. [Through the interpreter.] I don't know, he was at the time the secretary of the defense union.

Q. Are you sure you don't know whether Wetter isn't the organizer or the secretary here of the I. W. W.?—A. He been secretary in the Defense Union; I don't know that he is now.

(Above question repeated through the interpreter.)

A. I guess he is.

By ATTORNEY MORROW:

Q. Why do you guess he is?—A. He got I. W. W. button on his coat.

(Receipt placed in record and marked "Exhibit D.")

By Inspector Archibald:

Q. There was also found in your desk this blank, headed "Organization fund, the Communist Party of America," with subheadings: "This is your opportunity to help. The Communist Party has a big task before it. It must create its organizations in every State of the country. It must place its publications on a sound footing. It must publish leaflets and pamphlets clearly explaining the principles of communism. Its first task is a great campaign of

organization and education. Will you help? Make your subscription for this work." The blank states that remittances should be sent to the Communist Party of America, C. E. Ruthenberg, executive secretary, 1219 Blue Island Avenue, Chicago, Ill. How did you come to have that?—A. They sent that to my address.

Q. Who sent it?—A. I don't know who sent me. I could not remember. I know I received it from them. I don't know whether they going to ask it back; if they ask me I got to send it back.

Q. How many of these blanks did you receive?—A. I guess this is the only one.

Q. You know, don't you?—A. Only one.

Q. Did the letter come from the executive secretary of the Communist Party of America in Chicago?—A. I guess so.

Q. You know, don't you?—A. I don't remember.

(Blank referred to placed in record and marked "Exhibit E.")

Q. How or why were you corresponding with the secretary of the Communist Party in Chicago if you weren't an officer of your local or of the city central committee?—A. When the secretary was and he come, supposed to come, for the meeting and this correspondence got to be read to everybody, but we don't have no meeting and he don't read to everybody because we have no meeting, and he said I got letter received, and I say what kind of letter is this and he gave it to me. I got from him and maybe I read it.

Q. You said the letter came to you?—A. This came to me. Then sent to my address and as I was subscriber to the paper and they got the address—that I read this paper, *Głos Robotniczy*. Maybe Pinski gave the name.

Q. Did you write to the secretary in Chicago on any subject?—A. To Chicago, no; I don't write to him; I don't have any correspondence with him. They sent me letter, but I don't write to them, because I didn't have any time.

Q. Did you used to belong to the Industrial Workers of the World?—A. Yes.

Q. When?—A. It was about six years ago.

Q. How long did you belong?—A. That time when I work in the union shop I belonged to this organization, because I got to be member down there. This was organized union shop, and afterwards they organized the Amalgamated, and I join the Amalgamated.

Q. About how long did you belong to the I. W. W.?—A. I could not remember good; maybe, I think, a year or two; something like that.

Q. Now, on the night of your arrest at your home did the officers find a considerable number of papers and pamphlets, etc.?—A. Yes.

Q. Did you have this paper called the Voice of Labor, issue of August 30, 1919?—A. This is the Amalgamated paper; official paper of the Amalgamated Union.

Q. Was this four-page circular found in your house?—A. Yes.

Q. What is it?—A. It is old, about 10 years. It was about the strike in Petrograd, Kiev, Odessa, and say that thousand people got shot by the Russian Czar.

Q. Who publishes it?—A. Polish Socialist Party, central committee in Warsaw, May, 1912.

(Placed in record, marked "Exhibit F.")

Q. Was this found in your house?—A. Yes.

Q. What is it?—A. It is a note from the Russian Soviet Government to President Wilson; from the Foreign Minister Cziczerin.

(Placed in record, marked "Exhibit G.")

Q. Was this found in your home?—A. Yes.

Q. What is it?—A. It is a magazine.

Q. What magazine is it?—A. Free Thought.

Q. Where is it published?—A. Chicago, Ill.

Q. Is that some sort of religious organization that publishes it?—A. This is—I have a paper—that Polish paper, and they had this advertised that they got that kind of magazine in the paper, and I sent my address and they send this to me.

Q. Is this another edition of the same thing?—A. Yes.

Q. Has it got to do with politics or religion?—A. It has to do with geography.

Q. Was this button found in your house?—A. Yes; it was found in my house.

Q. Inscription on it is "They fought for your freedom; will you fight for theirs?" Isn't that one of the emblems of the I. W. W.?

A. It was in the Defense Union I received that. I don't know where they received it from. They had this kind of buttons.

Q. Were these four blank application cards for membership in the Communist Party of America found in your home?—A. This was found in my home.

Q. What were you doing with them?—A. They sent me with the other one. I have a letter from Chicago. They sent a letter and send those kind of applications and send this letter about some kind of pamphlets.

Q. I would assume from this that you were an officer in some local?—A. I am not an officer. It is supposed to be turned over to the secretary.

Q. Did you write to the secretary for them?—A. He got the same kind, and I don't give them to him.

Q. Did you write to the secretary of the organization in Chicago for them?—A. No.

(Placed in the record and marked "Exhibit H.")

Q. I show you a letter signed Glos Robotniczy, dated Detroit, Mich., June 14, 1919, and will ask the interpreter to read it.

A. I received that letter.

(Interpreter reads:)

COMRADE: We are sending you check for the \$7; also we are adding interest 30 per cent, which will total \$9.10. Ten copies of the daily paper we will send you each day, and the bills we are sending once a month. That means that you will receive your bill by the end of June. For these single copies we are charging 1 cent, and you will sell at 2 cents. For subscriptions we pay 30 per cent interest. Trusting that this will suffice at present, we remain, with best wishes.

GLOS ROBOTNICZY.

Q. Did you receive this letter?—A. Yes.

Q. Did you receive a supply of the papers as mentioned in this letter?—A. Yes.

Q. What did you do with those papers?—A. Sold them.

Q. How long have you been doing that?—A. I don't receive any more in December.

Q. When did you start?—A. It was after I received this letter. I have this proposition that they give me 30 per cent on the dollar, and they sent to me, and then they asked me that I shall have a stand somewhere with this paper, and I could not find and sometimes I have to lose that paper, and I didn't sell them, and I write them letter that they stop bringing them to me. If anybody want to subscribe, that is different, and I get my interest, the per cent, 30 per cent they promise. Thirty per cent when I have a subscription. Then I can make money; if I have to lose there is no use doing it.

Q. How do you sell those papers—by going to the homes of Poles?—A. I keep in my pocket. If anybody ask me if I got this paper I sell them it. I am ashamed to sell the paper like a newsboy. It is no use to have the 10 copies, because I could not sell them.

Q. You were known as an authorized agent and salesman of this paper, were you not? [Through the interpreter.]—A. [Through the interpreter.] No; I was not known as an authorized agent of this paper.

Q. But why would anybody ask you if you had it for sale?—A. I have in my pocket. Anybody would ask, if he is my friend, and he would want a paper. I show him what kind of paper, if he want to have it received in the house. It was like a newspaper; many agents come to me if I want a paper, and then I send it to you.

Q. You did the same thing among the Poles?—A. I tried to, but I didn't succeed.

Q. How much profit did you make from the sale of this paper? How much did you make in the months that you were selling it?—A. I could not remember it. I had \$3 and I make \$3.

Q. You haven't any idea or knowledge how much you made in the months you were selling this paper?—A. \$3, \$3.50; sometimes I lose.

Q. Have you a copy of the paper with you?—A. No; I sent them back, because I could not distribute any more, and I say I don't be any more agent.

Q. That was sometime in December that you stopped being the agent for the paper?—A. They sent me November, and I send the letter what the paper come down in my house, and I sent the letter and sent the money, and they stopped on November; I guess they stopped in December; I didn't receive.

Q. But you knew that from September 1 or near that date this was the official publication in the Polish language of the Communist Party of America, did you not?—A. I did not know this. I did not understand that means the

Communist Party. That is what I want to find out, and I don't know what it means. I didn't see any constitution.

Q. You knew, did you not, that from on or about September 1 last this paper, Glos Robotniczy, was the official organ in the Polish language of the Communist Party of America?—A. Yes; I knew that.

Q. You knew that?—A. Yes.

(The letter referred to from this paper, dated Detroit, Mich., June 14, 1919, and the envelope placed in record, marked "Exhibit I.")

Q. Was there found in your house when you were arrested this envelope which I show you, addressed to you from the Polish S. S. P., 1219 Blue Island Avenue, Chicago, Ill.?—A. Yes; this was found.

Q. Which one of the three letters that I found inside that envelope was the one sent you from Chicago [letters handed to alien]?—A. This one.

(The interpreter has translated the letter which alien identifies as follows, a translation being placed in the record.)

Q. Who is the man who sent this letter to you?—A. I don't know him, I never saw him, but he wrote to my house. I received that letter that he can not come to Baltimore, that is what he told me, I just keep that letter, that is all.

Q. From the tenor of the letter you must have written to him.—A. I was down there the central committee supposed to send him here but he could not come, he wrote that way, he could not come because it cost too much money and he could not leave Detroit.

Q. What central committee wrote?—A. I guess from Chicago.

Q. You say the central committee wrote for him to come and he said that he could not?—A. He could not. The central committee don't know that Pinski gave report that he organized here branch. If he organized it was no understanding. The people don't know what they joined, they wanted to understand well, and supposed to come some kind of man and explain, but they didn't send no people of this kind. This man is supposed to come here and he could not come. Then the branch decided to give up.

Q. How did he come to write you?—A. They had my address, I guess Pinski gave them my address.

Q. What does that mean in the upper left-hand corner of the envelope, P. S. S. P.?—A. Polish Section Socialist Party. This organization was transferred, was changed from this party, I think from the Socialist Party to the Communist Party.

Q. This envelope is stamped August 5, 1919, Chicago. Wasn't that before Pinski came here?—A. Pinski came before. I guess before. I don't know. I don't remember, but this has been Socialist Party what used to be and Pinski was here, I don't remember which date he was here. I know he was here in summer time.

Q. Wasn't it after August 5?—A. Yes; I not sure.

Q. If it was, how could Pinski have given your address to this man who wrote you the letter if you had never known Pinski before he came here?—A. I been in the Socialist Party a couple of years back and maybe they took my address from a newspaper.

Q. A couple of years back. You testified here that you had not been a member of the Socialist Party for eight years. A couple of years is not eight.—A. I don't know how it happened because I never been present down there. I don't remember what letters I received; if I interested I keep it, some of them I burn and I don't decide nothing about it.

Q. Twelve hundred and nineteen Blue Island Avenue where this letter and envelope came from is now the headquarters of the Communist Party of America. is it not?—A. I don't know sure. I know after Pinski I received that letter, but this envelope I don't know how it is.

(Letter and translation and envelope placed in the record, marked "Exhibit J.")

Q. I will tell you that your friend and the secretary of your local, Andrew Marosz, testified in this office four days ago that Pinski addressed the meeting here in which he explained the difference between the Socialist and Communist Party and advised the formation of Communist branches on August 13. What do you say to that?—A. Maybe, I could not remember the date. If he gave that, maybe he have put it down what day it was. May it was that date. I know it was the summer.

Q. If it was that date, then your answers concerning this letter are incorrect.—A. Got the date in that letter? I know it was after the Pinski meeting I received that letter. This envelope, I don't know how it happened that this

letter was in there. I know I received it in an envelope, but this particular envelope, I could not say.

Q. But you identified the letter as the one that came to you in that envelope.—A. I got in envelope, but I could not say whether it was this envelope. I could not say it was because I don't remember.

Q. Now, Truss, as a matter of fact didn't you write to this man Plezia and invite him to come to Baltimore.—A. No; he not receive any letter from me.

Q. Is Comrade Ruspindowski, the recording secretary of your local, of the Communist Party?—A. He take that job for a while.

Q. How many branches of the Communist Party are there in Baltimore to your knowledge?—A. I don't know.

Q. How many do you know?—A. I know it was one Russian, and when I been locked up, I been in jail, and one was Lettish, and he told me that he was a member, but I don't know those people.

Q. Do you know there is a Jewish branch?—A. I don't know.

Q. Your friend Marosz testified here very frankly on the 15th of this month that you had told him that you had made arrangements to get Pinski to come to this city to speak. Is that true or not?—A. I have arrangement, I give him that I get arrangements with the Amalgamated Clothing Workers that we want him only one evening, and he will speak in the Polish Home, that is what I told him and he know this. He was speak for the Amalgamated Clothing Workers?

Q. You told Marasz that you got Pinski to come here to address the Amalgamated Clothing Workers?—A. I told him, yes, the Amalgamated Clothing Workers?—A. I told him, yes, the Amalgamated Clothing Workers.

Q. But all the time you knew that Pinski was a national organizer of the Polish section of the Socialist Party?—A. I don't know. I know he is a speaker. We don't have long time.

Q. Your prior testimony this morning was that you knew Pinski was an organizer of the Polish section of the Socialist Party?—A. Yes; it was in the paper, an advertisement in the paper.

Q. Was this small pamphlet found in your home?—A. Yes.

Q. What is it?—A. It was a book from the Socialist Party when was eight years ago.

Q. It is printed by the Polish section of the Socialist Party?—A. Yes.

(Placed in record and marked "Exhibit K.")

Q. I have here a sheaf of papers pinned together, some in English, but mostly in Polish, and ask you if they were found in your possession?—A. Yes; they were found in my possession.

Q. Were they pinned together?—A. They sent it that way.

Q. Where did you get them?—A. I received in hall when was a secretary, that Marosz. He is supposed to have this in the meeting and this not was read and then he say got some kind of papers like this, and I say what kind of paper is this, he say, take it, you read it, and I read that, that this is ask for those pamphlets those advertisements, then I could not do nothing. I used to keep them and when he asked me this I give him back. I just look over this.

(NOTE.—One of the papers referred to in this sheaf of papers is headed "Communist Party of America, Pamphlet No. 2, now ready, entitled 'The Development of Socialism from Science to Action,' by Karl Radek." It describes Radek as one of the foremost men of the Communist movement of Russia, that it was he who represented the Bolsheviks in Germany during the uprising of the Spartacans. Another paper attached in English is the Communist Party of America, "Application for Charter." Placed in record and marked "Exhibit L.")

Q. Was this letter or writing found in your home?—A. Yes.

Q. Is that your writing, your handwriting?—A. Yes, this is my writing. I make from book I read it. I read that time book and make this.

Q. Without reading it entirely, tell me what it is about?—A. It was at that time, when was May 15, 1919, when plenty of people was without work. It was 83 cities was slow, it is from newspaper and that in 22 cities they need the work and in 29—this is not important. This is just from newspaper how many people without work and how many people get the work.

Q. Does it state in this letter that you advocate the formation of a new party or are in favor of a new party?—A. Nothing here. This is marked by the American federation organization and this system what is now without work many people, and so on.

(Placed in record, marked "Exhibit M.")

Q. This circular in English emanating from the Workers' Defense Union, was it found at your home?—A. Yes; I had that.

Q. Where did you get it?—A. I got it down there when I go to get those buttons and I received that.

(NOTE.—Circular is headed "Using the Espionage Act to Terrorize Labor—Some Judicial Atrocities." Placed in record, marked "Exhibit N.")

Q. Was this book containing many blank receipts and stubs with the stamp thereon "Industrial Workers of the World, Garment Workers," and so forth, found at your home?—A. Yes.

Q. How did you come to have this in your possession?—A. This was awhile ago, as long as the I. W. W. existed. It was given to members get the dues.

Q. Were you the treasurer or financial secretary?—A. No; I just was collecting; anybody give some money, you know, for the organization. This is a member have No. 4; it was in the book; and see that anybody have collected any money for this organization that shall collect it and give this receipt, and after this receipt goes to the financial secretary.

Q. Then you were a collector for I. W. W.?—A. I not collecting anything; that it not; I don't been collector, and I don't collect. The members received that; and anybody give him money, give him receipt. I don't received any money, and I don't collect. The receipt book is full. I received that book, and I keep it.

Q. Under this warrant of arrest, we are not particularly interested in your membership in the Industrial Workers of the World; but there are four stubs and five receipts missing from this book, so that whoever had it must have made some collections. Did you?—A. No; I never collected nothing.

(Placed in the record, marked "Exhibit O.")

Q. Did you attend a meeting in this city of a Russian or a Polish organization of several foreign races on July 20, 1919, in Fishers Hall?—A. Fishers Hall?

Q. Yes.—A. Who called that meeting?

Q. You don't remember?—A. I don't remember. I been in one meeting that Russians want do have organize some kind of school, to have a school of some kind. I was step in. It was a speaker what is named Raast, I guess, but I not been interested, and I left the hall and go home.

Q. That meeting I referred to lasted from about 10.30 in the morning until 3 in the afternoon.—A. Not this; it was in the evening when I been down in Fishers Hall.

Q. At this meeting I referred to some of the subjects discussed were the meeting to be held in Chicago of the federations of the Socialist Party on August 23 and the conference of the Communist Party on September 1. Does that recall to your mind the meeting in question?—A. No; I not been present at that time.

Q. At this meeting a man named Kozenchuk was supposed to be elected as a delegate to Chicago. Do you remember that?—A. No; I not been down there.

Q. Do you remember a meeting that on July 27 a delegation and as many members in Baltimore as possible are to go to Philadelphia to attend a meeting of the same organization in that city?—A. No.

Q. At this meeting I refer to did you state from the floor or platform that you wished to step out of the Union of Russian Workers and reorganize the Polish branch of the Bolsheviks in Baltimore?—A. I don't speak like that.

By Attorney MORROW:

Q. Were you there at this meeting?—A. No.

By Inspector ARCHIBALD:

Q. Do you state under oath that at no public meeting last summer did you make such a statement? (Through the interpreter.)—A. No; I did not say that.

Q. If not using the same words, did you say the substance of that? (Through the interpreter.)—A. No; I did not say anything.

NOTE.—Now, as your attorney has had an opportunity to read it over, I will place in the record at this juncture a transcript of the statement obtained from you subsequent to your arrest by an agent of the Department of Justice and mark it Exhibit P.

Mrs. HELEN TRUSS, witness, being first duly sworn, testified as follows:

By Attorney MORROW:

Q. Mrs. Truss, you are the wife of Thomas Truss, are you?—A. Yes.

Q. How long have you been in the United States?—A. Twenty years.

Q. How old are you?—A. 28.

Q. How many children have you?—A. Three. I had four, but one is dead.

Q. Do you know anything about your husband's political views, his political opinions?—A. All I know that he was a good and honest husband and I never heard anything that he was going against America. He always was, I can not explain it. As far as I know he listened to me what I said. A couple of years ago he was in the Socialist Party and I told him to leave that party alone because I heard it was so and so and he said as long as you say I am wrong I would rather listen to you and follow your way which you say is good. He always listened to me what I was pleasing to tell him.

Q. Has he always provided for you and your family?—A. He always did support my family and my children and he said he wanted to give the children good education.

Q. Have you ever heard him express any opinion against the Government of the United States?—A. I never.

Q. Did you ever hear him express a desire to have the Government of the United States overthrown?—A. I never heard such a thing.

Q. Did you ever hear him express a desire to resort to force against the Government of the United States?—A. I don't understand.

Q. By force I mean violence, fighting?—A. No; I never heard him.

Q. Are you a member of St. Paul's Presbyterian Church?—A. I was going to be a member, but I was a member of the Holy Rose Church. My husband join to the St. Paul's Church, but my father was in there and my mother say I see later if I can understand about this which is best place. I don't know so far which place is the best, this church or this church.

Q. Your church is Roman Catholic, is it not?—A. Yes.

Q. What church does your husband go to?—A. St. Paul's Church now.

Q. For how long?—A. I guess he been going about four years.

Q. Is he a member?—A. He is a member.

Q. Mrs. Truss, you had a brother in the United States Army, didn't you, and did he volunteer or was he drafted?—A. He was joined in.

Q. Did Mr. Truss urge him to join, volunteer?—A. Well, of course, he says brother-in-law if you join it you know your parents not in good condition you might stay and help them. And he say I can not help my parents, I think I care more for the Government. I would not like to be the last of the Government and I would like to help the Government so my people could stay free in this country.

Q. Did Mr. Truss have anything to do with his joining?—A. He didn't have anything to do with it but he told my brother not to join in because he would be killed and he said if I be killed there would be one killed and you will have your liberty here.

Q. He died of wounds, didn't he?—A. Yes.

By Inspector ARCHIBALD:

Q. Did I understand you to say that your husband belonged to the Socialist Party up to a couple of years ago?—A. Yes.

Q. You mean two years ago?—A. It is longer than that, as far as I know he was in the Socialist Party about five or eight years ago. I could not remember, but it is a mighty long time.

Q. You aren't confusing the Socialist Party with the I. W. W. are you?—A. I don't know what that means.

Q. The Industrial Workers of the World?—A. I don't know.

Q. I understood you to say that he belonged to the Socialist Party up until a couple of years ago. What do you mean by a couple of years?—A. What do I mean by that?

Q. How many are a couple in your mind?—A. I don't know; a couple means two, but I know that he left that party five or six years ago.

Q. You said a couple; then you meant five or six years?—A. I could not know what is couple. I always call couple five or six years or so.

Q. Do you know that your husband belongs to the Communist Party?—A. I never knew that.

Witness excused.

By Attorney MORROW:

The counsel for the alien put in evidence all the following papers, which were found among his effects taken by the Department of Justice.

To the interpreter:

Q. Mr. Alexander, what is this?—A. (Interpreter reads:) In a questionnaire you have voted to support a loan for a house and you have promised to give \$10 in a few weeks. This thing is very important. Each week, even a day which goes by, brings—

To the alien:

Q. What organization was that?—A. This was, I guess, 1911, that was the Socialist Party, Polish branch, and used to buy a house, and Olskanski is now in the United States Army.

Placed in record, marked "Exhibit Q."

To the interpreter:

Q. What is this?—A. This is a little pamphlet issued by the Unity-Polonia Printing Press, 701-703 South Ann Street, Baltimore, Md. It is a proclamation to the workers of the Committee of Literature, Branch 192, U. P. R. S.

To the alien:

Q. Do you know what U. P. R. S. means?—A. Polish Branch Organization Union.

Q. What is it?—A. It was the Polish branch of the I. W. W.

Placed in record, marked "Exhibit R."

To the interpreter:

Q. What is this?—A. A drama in five acts.

To the alien:

Q. Do you know what this play is? Have you read it?—A. No; I have not read it.

To the interpreter:

Q. What is that?—A. "The Struggle for the Votes for Woman Workers," issued by the Polish Socialist Party.

Placed in the record, marked "Exhibit T."

Exhibit U is circular letter, dated October 23, 1919, of the Amalgamated Clothing Workers of America addressed to all local unions.

To the interpreter:

Q. What is this?—A. That is a Russian book entitled, "Whom the Soldier Serves."

To the alien:

Q. About when did you receive this?—A. A long time.

Q. A number of years ago?—A. Yes; a couple of years ago; many years.

Placed in record, marked "Exhibit V."

Polish monthly magazine, published in Baltimore and dated October, 1917, placed in record, marked "Exhibit W."

To the interpreter:

Q. What is this?—A. Title of this book is "The Old Order in Europe and the New Order in Russia," by M. Phillips Price, Russian correspondent, Manchester Guardian.

To the alien:

Q. Did you read this pamphlet, Mr. Truss?—A. No; I don't read this yet.

Placed in record, marked "Exhibit X."

Q. Did you sell these?—A. This books?

Q. Yes; did you have them for sale?—A. I had a few but I don't know how many. I sell this, I guess I sell a few.

Q. You sold a few, but you didn't read it?—A. I did not read it.

To the interpreter:

Q. What is this?—A. This is the book entitled, "Socialization of land in Russia."

To the alien:

Q. Did you read this book about the socialization of land?—A. Yes; I read it.

Placed in record, marked "Exhibit Y."

To the interpreter:

Q. What is this?—A. "The Great French Revolution," by B. Backs.

To the alien:

Q. Did you read this book?—A. Yes; I read it.

Q. Is it historical or is it socialistic?—A. It is history from the French.

Placed in record, marked "Exhibit Z."

To the interpreter:

Q. What is this?—A. "Industrial Slavery and Socialism"; author, W. D. Haywood and Frank Bohn; translator, Roman Lazarkewicz.

To the alien:

Q. Have you read this book?—A. Yes; I have read it.

Placed in record, marked "Exhibit AA."

To the interpreter:

Q. This one?—A. This book is issued in memory of the great Polish poet and writer, Adam Mickiewicz.

To the alien:

Q. Have you read this book, Mr. Truss?—A. Yes.

Placed in record, marked "Exhibit BB."

To the interpreter:

Q. What is this?—A. This is the same in Russian, "Note of Russian Soviet Government to President Wilson."

Placed in record, marked "Exhibit CC."

Exhibit DD is membership of the Amalgamated Clothing Workers of America, Local 119, in the name of Thomas Truss.

Q. Did you receive this letter?—A. This is my name and address, but I don't remember what it is.

Letter from Harry Kelly, secretary Alexander Aldamas defense committee, dated January 15, 1913, placed in record, marked "Exhibit EE."

Certificate of the Chicago strike relief conference placed in record, marked "Exhibit FF."

Magazines entitled "Free Thought," placed in regard, marked "Exhibit GG."

To the alien:

Q. What is the subject matter of these magazines; is it political or religious?—A. This is the understanding the world, the people, and so like that.

Q. Is it evolution?—A. I guess evolution.

Exhibit HH is an issue of the Voice of Labor.

Q. Where did you get that?—A. I wrote it from a book.

Q. You copied it from a book?—A. Yes.

Q. What is it?—A. It is a funeral march.

Q. What book did it come out of, do you know?—A. I don't remember. It was a long time, about seven or eight years, I wrote this.

Q. There is a date on here, 1909; has that anything to do with it?—A. That is the date; it is 11 years already.

Placed in record, marked "Exhibit II."

Q. Mr. Truss, what was, what kind of an organization was the Russian Workers' Organization that you belonged to?—A. Russian Workers' Organization?

Q. Yes; was it political?—A. No; this was not political; this was organization like a school—education and mutual help.

Q. Did it have any program of political activity?—A. Well, they have this kind—that the workers can belong to this kind of organization and have education and mutual help, and they have lecturer and read and have speaker who tell some country not civilized yet and we shall know this country, this people, what nationality, and so.

Q. Did it have anything to do with government?—A. Nothing to do with government.

Q. Was the Russian Workers' Organization that you belonged to the same thing as the Union of Russian Workers?—A. This not the same thing; this is different now.

Q. Was it the same organization?—A. Same organization joined with other organization in the United States. That is what I understand. I been member down there.

Q. What do you mean, you were a member?—A. Russian Workers' organization, and I see that many Russians joined together a big organization and they have the Russian People Union. Then I think I got to take care of Polish people, then I not been there in this organization and I been out and I look around for some kind of Polish organization, education organization. Then I remember that this Socialist Party have a library and books. I can get the Polish book and read, and I don't been member down there and I go to St. Paul's Presbyterian Church and I have a lesson down there and I was satisfied, and then after Pinski came, Pinski organize such a kind of organization and give understanding of what kind, the Communist Party or Socialist Party. He explain everything, socialization of government and so on, and that got me to join this

kind of organization because I know in the post office—I had the statistics in the Polish language—raise a cent in the mail, and after the war was over the post office no want to make a profit dropped that cent down, then is good. Would not be high everything so if everything belongs to the Government. I think it good—going to be real cheap to go anywhere. Then I think it going to be good and then I joined this organization.

Q. Did you attend the meetings of the Union of Russian Workers?—A. A couple of times I go down there. When I see a crowd, I go down, and lecture over, and I hear what they say, and I go out.

Q. Were you ever a member of the Union of Russian Workers?—A. No; I never been member. That is why I don't go down there because those people want I see them, and after they see me, I say there is no use to argument, I don't like to argue. I don't know; I want to find out. I am not so easy to belong. Somebody else I know be a member, if I see that man tell me everything, if I not understand, I not stay. I don't understand what organization is this. I joined to this organization Communist I think I going to understand. I ask the constitution, not printed yet; I asked the principles, not yet; a little later they going to be printed and so so. I been that way if I know what kind of organization I would not join. I don't know what kind it is. I never been against the Government. I don't want some kind of organization if I know that any organization not legal, against the Government. I would have different mind, I would not be there.

Q. Now, Truss, you testified that some time about eight years ago you were a member of the I. W. W.?—A. Yes.

Q. And that you joined the Industrial Workers of the World because the shop that you were working in was organized in that union?—A. Yes.

Q. Did you take any active part in the meetings of the Industrial Workers of the World?—A. I been member down there. Sometimes they decide something, everybody vote.

Q. When you left the shop that you were working in when you were a member of the I. W. W. did you leave the I. W. W.?—A. Yes.

Q. You left that organization as soon as you left that job?—A. Yes; then I not work any more, then I don't belong to this union; then I had a work shop myself a couple of years; then I don't have to belong to any organization.

Q. While you had the shop for yourself, did you belong to any organization of workers?—A. No.

Q. In other words, you joined these organizations of workers in order to earn your living, is that right?—A. Yes.

Q. I want to get this matter of Pinski's visit straight. Did you, for the Clothing Workers or for anybody else, invite Pinski to come to Baltimore from some other city?—A. No.

Q. Did you ever write a letter to Pinski, directed to another city from Baltimore, and invite him to come and speak at any meeting?—A. No.

Q. How did Pinski come to speak to the Amalgamated Clothing Workers of America?—A. It was in the paper advertising that Pinski going from city to other city and was near Baltimore, somewhere in Philadelphia, and he can come to this Baltimore. Then I had a meeting Friday; it was the Amalgamated Clothing Workers; and somebody from those people down there told me that he going to come for one day. It be free, and he have time to speak for the other organization—Polish. Then I asked the crowd—Amalgamated—if the wish to have a speaker in our meeting to have people understand what unions mean, and the local decided to have him for one night, and the local committee arrange, told me I shall attend that, and one other man, we shall have a mass meeting for the Amalgamated Clothing Workers of America, Local 100, and we have circular printed that mass meeting and Pinski going to speak for economic question, and he came and spoke for mass meeting. Plenty of members were present and speak that time, and that is what I work in this committee for Pinski.

Q. Are you an officer of your local of the Amalgamated Clothing Workers?—A. Yes.

Q. What are you?—A. They elected me for president.

Q. You are president for this local?—A. Yes; I run the meeting; they call me chairman.

Q. Now, there has been some testimony about some buttons of the Workers' Defense Union that you got. Did you get those for your own use or did you get those for the Amalgamated Clothing Workers, your local of the Amalgamated Clothing Workers?—A. For the Amalgamated Clothing Workers.

Q. Were you appointed to get them for the Clothing Workers or did you do it of your own free will?—A. I was a delegate.

Q. You were a delegate?—A. I was a delegate to the Workers' Defense Union that was to attend to defending our members.

Q. Mr. Marosz has been spoken of as your friend. I don't know whether he is or not. Is he your friend?—A. I don't know him long. I know him from the meeting. I met him at the meeting. I speak with him. He is that kind of friend. I never been in his house, and I don't know him well.

Q. Did you ever know him before the organization meeting that Pinski held?—A. No.

Q. And you have never been in his house?—A. No.

Q. Has he ever been in your house?—A. He has been in my house.

Q. What explanation did Pinski give at the meeting of the Amalgamated Clothing Workers of the purpose of the Communist Party?—A. He didn't give any.

Q. He didn't give any?—A. No.

Q. Did he explain what the Communist Party was?—A. No.

Q. In that meeting, what did he talk about?—A. He talked about union.

Q. He talked about union?—A. Yes.

Q. And did not mention the Communist Party at that meeting?—A. No.

Q. When did you first hear of the Communist Party?—A. When he was speaking in the hall.

Q. The night after he addressed the Amalgamated Clothing Workers, there was an organization meeting of the Communist Party at a hall on Broadway?—A. Yes.

Q. What did you have to do with that meeting?—A. I been chairman in the meeting before, and he know me that I am the chairman from one meeting, and he met me and told me, please be here in this meeting, and he told me that I shall advertise that he is going to speak to-morrow in the other hall, and I explained to the people that to-morrow Pinski will hold a meeting in the other hall, and if anybody wish to come they have free admission.

Q. You announced that at the meeting of the Amalgamated Clothing Workers?—A. Yes.

Q. Then you attended the organization meeting of the Communist Party the next night?—A. Yes.

Q. At that meeting, what explanation did Pinski give of the principles of the Communist Party?—A. He told me that he was going—

Q. I mean at the meeting, in a public way?—A. He say that we going to give a lecture from the start, when the people was not civilized, and he give a lecture about the shoes; when they had no tools, knives, needles, and machinery, and he say that when the people find the tools, the thing what they need, and the work little by little, and make the shoes, and now those shoes what we wear for civilized people; and say that everything in this world go on and progress, and say that now he represented the Socialist Party, and the Socialist Party have an idea that everything shall be socialized, like mines, the railroads, and so everything shall belong to the Government, and the people have a good living, and so that is what I understand from his speech; and after the speech was some discussions, about the same, and they gave him questions about the sabotage, it is good; but he was against sabotage, because, he say, that anything we build we need, and no use to destroy it. Someone in the public was down there. He was talking like that, and gave him questions, and so-and-so, and I don't remember who this was, and I pay no attention. When the people start to talk and halloo, and so I went out.

Q. You know the Government doesn't own the mines now, don't you?—A. Yes.

Q. How did you understand that the Communist Party would be able to make the change so that Government would own the mines, for instance?—A. I think that the Communist Party got law like in the United States we got him that everything that in Government shall be represented, shall vote, shall have a ballot, name in the ballot who going to be any official, you know, and who going to be and we got to vote and elect him and he going to do what the people he represents want.

Q. In other words, you understand that these changes, if any, were to be made through the ballot?—A. Yes.

Q. Did you understand that there was to be any change made by violence, by fighting, force?—A. No; I did not understand that because this is a different way. I mean that now the world is civilized, do not have to fight as long as we can understand each other by language, lecture. It is not necessary to fight.

Q. Did you understand that the Communist Party expected to overthrow the Government of the United States and set up a new Government?—A. No.

Q. Did you understand that the Communist Party was opposed to organized government?—A. No.

Q. Do you think that the Communist Party believed in representative government?—A. Yes; I think they believed in representative government.

Q. You know what representative government is?—A. Yes.

Q. What is it?—A. It is a government which is elected from the people and represents the people.

Q. That is the kind of government you believe in?—A. That is what we got in the United States.

Q. Do you believe in that?—A. Sure.

Q. Do you believe in the Government of the United States?—A. Yes.

Q. Do you think that is a good kind of Government?—A. Yes.

Q. Do you believe in the overthrow of the Government of the United States?—

A. No; I don't believe in it. When the people think at the next election if they find that anybody representing them ain't right, they not nominate him but nominate another one and elect him and go in place those ain't fit for the people.

Q. Do you believe in—do you believe if the Government of the United States don't properly represent the people that the people should go up and seize the Government and throw out the people who do not truly represent them?—A. No; I don't believe that.

Q. You are a Socialist, aren't you, or are you a Socialist?—A. I am from the heart a Socialist because I am feeling that the Socialist Party as they got the demand, as long as I understand, is good.

Q. The demand of the Socialist Party, as you understand it, is good, is that what you said?—A. That is what I think.

Q. You want to be a citizen of this country?—A. Yes.

Q. You would like to be a citizen of this country?—A. Yes; if I find this date and so I would be a citizen.

Q. If you find the date when you came here, you mean?—A. Yes; I want just to understand this: Suppose if I want to go in my country to see my father and mother, I can go down there.

Q. You mean to say that if you wanted to visit Poland can you do it?—A. Yes.

Q. Yes?—A. I would like to know.

Q. Are you a Russian?—A. No. I have been in Russian Poland, and in Russian Poland got to learn the Russian language. Can not have learn Polish, I learn myself. After I finished Russian, I learned it.

Q. You were not allowed to speak Polish when you lived in Russian Poland?—A. No; during that time Polish people were in iron hand.

Q. Why did you come to America?—A. I came to America because America is a free country. I heard that down there in Russia that I feel in Russia awful. I had no liberty, I had nothing. I do my best and they wanted, the Russian Czar Government, tried to make me Russian; I feel bad. I like to be Polish as long as my mother told me I was Polish. My father Polish, my mother Polish, I shall be Polish until I die. Some of them wanted to make me Russian. The Czar tried to make me Russian. I go away from Russia and came to the United States and be free. I am Polish until now.

Q. Did you find that you were free in the United States?—A. Sure. I find here I start to understand, I was afraid when I came, I thought maybe somebody here to like that in Russia. People say not here, free speech, free press, and free assembly, any church you belong in you can go, and any church you can go, and I find out and I like it.

Q. You don't want to go back to Russian Poland?—A. No; I want to stay here long as I can.

Q. You don't want to be deported?—A. No, sir; I don't want to be deported. If I have a chance some time to go and see my family, my brother and father, I wish to see them down there, but if I can not, can not help it.

Q. Would you like to see the government of the Soviet Russia established in the United States?—A. I don't like to see because I don't know what kind. Anything I like to have, I want to find out what it is.

Q. You don't know what Soviet Russia is?—A. I don't know what it is. I guess the time will come when we will find out, maybe year or two. The press will write it and we get letters from those people who are down there, and I think that we are going to find out after while. I don't believe in it until I find out what kind of government this is. I think that now if everybody say it is wrong, I am with the majority; I am satisfied with the majority. If the majority

find out this is wrong way. this is wrong way; I don't see to jump myself and say this is good. Those people who understand more than I, if they say this is no good; it is up to them.

Q. Have you ever been in any trouble before?—A. No.

Q. Have you ever been arrested?—A. Yes, I been arrested once. It was at that time; it was a strike and I was from those people who working in and I was down there and the people decide to have a strike and I decided to go out with them, and I go out, and after awhile the people see that nobody working down there and I was going with them too and that time when I was walking on the pavement about one block from the shop and the policeman came and locked me up and I been arrested that time and I don't stay there long and was a case and I pay \$1 fine and cost.

Q. Was that when you were a member of the I. W. W.?—A. Yes, at that time this organization existed.

Q. Have you ever been arrested for any other cause?—A. No.

Q. Did you ever see or read the constitution of the Communist Party of America?—A. No.

Q. You never saw it?—A. Never saw it and nobody read it.

Q. You said to Mr. Archibald here this morning something about having seen the charter in a roll?—A. That was the charter.

Q. That was the charter. Who had that?—A. The secretary, Marosz.

Q. Did you read that?—A. I don't see. It was a charter and some kind of letter and number, but I think for this charter like always in the Amalgamated and in other societies that this charter shall be framed and hung on the wall. Then I told him to get the frame and then he took that and is supposed to frame it. Because I asked him first get the charter, what kind of organization is, we got the charter and we don't know what kind of constitution. If we got this kind of organization, we got to find out the constitution. The paper was ain't printed yet. They going to decide what kind of thing it going to be. We don't know what we don't get. As long as we don't get it we don't read it. In the Amalgamated Union we got the constitution in the book. This book from the Communist Party, nothing at all. What is it, I would like to know what it means. I don't know myself now what is the Communist Party.

Q. Did Pinski promise to send somebody on to explain the principles of the Communist Party and the constitution?—A. He told that he going to try to send somebody and the constitution he going to send it and we going to find out.

Q. Did he ever do it?—A. No.

Q. Did the speaker ever come?—A. It was received after Pinski, it was received this paper, he is supposed, this man Plesia, but he say it cost him \$40 to come here and nobody would spend so much money.

Q. Is that his letter [referring to Exhibit J]?—A. Yes.

Q. Did you get this letter from Plesia after the organization meeting?—A. Yes, after the organization meeting.

Q. If the organization was held after August 5, how could that letter be in this envelope which is postmarked August 5?—A. This envelope is mistake. I don't know how this letter came and been in that envelope. I don't know what kind of envelope this is.

Q. Was this local branch of the Communist Party here in Baltimore ever organized? I mean to say, did you ever elect officers and ratify the principles of the Communist Party?—A. We just appointed them.

Q. Appointed them?—A. Yes; we say you be secretary.

Q. Who say?—A. Everybody. They say you take secretary, nominate this one. They don't want it, and which one is left, and we take him. That is the way.

Q. Who was the chairman?—A. Nobody, they have a chairman at each meeting. Anybody can run the meeting. I was many times in the meeting.

Q. There were only six or seven that joined here in Baltimore?—A. Yes.

Q. Whenever that group got together you were present, weren't you?—A. Yes; I been down there. When they came together we find out, and they are impossible, that if we have 12 or 14 members, then we are allowed to have a meeting. If we have five, one take this job and one take this job, who going to take the floor? No use having a meeting. If we get more members, then we get another meeting.

Q. When was the last time that this group got together in that way?—A. It was August or September, I guess, like that. Long as we organized in this

meeting all the time when we came to that hall on Sunday and we don't find any members. I guess last time November, I guess so.

Q. The last meeting was in November?—A. No; October, I guess October. October was the last meeting, and we came together and decided that we ain't going to have no more meeting like that. It is no use to waste the time, and we decided to give up the branch, and we told everybody that they shall give up, and they say all right, we give up and there is no use.

Q. You believe in education, don't you?—A. Yes.

Q. How is it you have so many different kinds of books? What do you get them for?—A. These books can not give me education, what is here in those books. I got more books, other kind. they just took this that they think no good. I got more books in the house, but they don't take any Liberty bond button. They don't take the button I got for \$5 for Red Cross, they don't take this. They left this in the house, but they take those buttons which they wanted. I believe in truth, and I believe everything good. I believe to be free; I wish everybody shall be free. Everybody in this world shall have this kind of government that shall be free, like we have in this country.

Q. You have subscribed to a Liberty bond, have you?—A. Yes.

Q. You have contributed to the Red Cross?—A. \$5, I buy button.

Q. And you have contributed to one of the regiments?—A. Yes; the war was over; I work in the shop; there was a collection for the Three hundred and thirteenth Regiment; I buy this button—any kind of button. I am ashamed to say this is no good if anybody sell. I don't know how to say I don't want it if they explain this is for poor soldiers; they fight for this country, fight for you, and for everybody in this country. Then I say I be no good if I don't help them. If I got couple cents, I let them have them. I give them my couple of cents and let them have our assistance.

Q. You attend any classes at St. Paul's Presbyterian Church?—A. Long as I got the time I go.

Q. What kind of class?—A. I used to go to the classes. I used to go to learn cutting clothes. I been down there to any lectures of St. Paul's Church. I tried to be; sometime I missed; I can't be all the time, because I am married man. I was down there, and I hear in the lectures what somebody say.

Q. Did you attend any English classes there?—A. I attend the class at night school. English, in Bank Street public school. It was Dr. Krelger, and he teach the Polish people and he give explanation; explained the United States Constitution to the people as long as I understand how he explain, and he explained that the American Constitution is good, and I say shall be that way.

Q. You say it shall be that way?—A. As long as the Constitution as he explained it. I had not read it. He said in this country is good, and I believe that way; and sometime he say how the people have the opportunity to learn in the United States. Everybody got the chance; and I been in Russia; if anybody want to learn in school they got to pay money. My brother went to the commercial school; that cost \$150 a year to pay for the learning and books and uniform and everything. It is impossible to learn. He finished that school. He help a lot, too.

Q. That is in Russia?—A. Yes.

By Inspector ARCHIBALD:

Q. You respect this country and love it, I gather from your statements, and respect our institutions; is that right?—A. Yes.

Q. Did you say in the Western police station on the day of your arrest, "To hell with the Government of the United States"?—A. Never in my life. It was spite for me if I been down there and my wife came to me and say what you done that I can not find where you are? Then I say I don't do nothing and I wish to be out, and I don't say nothing against the Government; I am not the only one. I say here is next door from me there was a soldier, but I see him down there, and he told me he was in trouble for the "Reds," and I same thing. Then my wife say that this is you, when I can not find you. I say here is soldier for the same purpose. He been in France, and if he be against the Government he would not go to France and fight; and see, this soldier is for the same purpose; I am not the only one. When my wife gave me English question and the policeman grabbed my wife. I say this is my wife; let her talk to me. He said, you know you are not allowed to say anything against the Government. My wife has the right to come and see me, and then I started to talk Polish that he let her talk to me; if he not understand, he would not take my wife from that place. And then I started to talk Polish

and she had to go out. For that witness I have my sister-in-law. She was there, too. I never say that.

Q. Can you tell me in a few words what you consider to be the principles and tactics of the Socialist Party?—The Socialist Party?

Q. Yes.—A. The principles?

Q. Yes; what they advocated.—A. The principles of the Socialist Party—they got to learn first to understand everything, the education got to have it. read the books, then interest and everything, you know, what the good way, you know, and have it, and then vote for him, elect the Government and the Government like. I remember when I been in the old party, there was a candidate to legislature, to Congress, to the President, and so, and the people vote for the Socialist and vote for prohibition. I think this is the way the Socialists mean.

Q. In your mind, what is the difference between the Socialist Party and the Communist Party?—A. I tell you I don't know about the Communist. I don't have any principles, and I don't have any constitution. How I can know this organization? I don't have any constitution what this organization means.

Q. Didn't you tell your counsel what you think it means as derived from the speech of Pinski [through the interpreter]?—A. I told that way that I understand from Pinski that he told that socialization mean the Communist Party; that everything what is big, big industry, big mines, railroads, all the kind of big industries, the post office the United States got already. If this have been in the Government and the people vote for Government and represent it, then we get everything; that is what I mean. The Government never wants that the people they employ shall suffer. Then it be better conditions working for the Government than working for capitalists.

Q. Didn't you hear all that for years in the Socialist Party?—A. They didn't say that way, not like that, not like he say. The Socialist Party, I was a young member that time, and I am not very interested, not studied. When I married I was different. More the older then more I like to find out and understand.

Q. Didn't Pinski talk for two hours?—A. I guess about two hours.

Q. On the principles of the Communist Party and show wherein they differed from the Socialist Party of America?—A. He spoke, I can not find out the difference from the Socialist Party and the Communist Party. I don't know, this is different, this is not. I don't know what the difference is; I want to find out. I don't know; I would like to find out. That is what I want to know.

Q. Didn't you tell the Department of Justice that Pinski told you that after the mass meeting he will tell you the principles?—A. Yes.

Q. That is what you told the Department of Justice?—A. Yes; he told, and he said I am going to send you the literature; that is what he told us.

Q. Didn't he tell you by word of mouth what the principles were?—A. I don't remember.

Q. Didn't he tell you as an organizer what he construed the principles to be?—A. He didn't explain very good, and maybe somebody understand better than I.

Q. But he did make an explanation of the principles, didn't he?—A. No; he had a lecture from the beginning from skin to shoes, industries, and big buildings.

Q. You told the Department of Justice that Pinski said to you that after the meeting he would explain the principles and you have admitted that you told that to the Department of Justice. Did he explain?—A. He tried to explain. The people gave him questions, many questions, and everybody take the floor start to speak, and I could not understand so many people at one time. I could not understand it. He tried to explain and I could not understand his speeches and those who gave him questions and I could not understand who it been down there and he is supposed to go on the train so on. He said I got 15 minutes to be in the station and then he explained as much as he can and go away.

Q. And despite that lack of definite knowledge you applied for membership in the Communist Party, joined and formed a specific branch with others of your race and held meetings, is that correct?—A. Yes.

Q. Did you go with Pinski to the train that night?—A. No; I go home.

Q. Did you meet Pinski at the train when he came to Baltimore?—A. No; I met him in the hall, Polish Home.

Q. For the first time?—A. For the first time.

Q. You have stated that your branch decided not to hold together any longer. Did you return the charter?—A. I don't know what the secretary done. He is supposed to know when anybody was the secretary, did he done that job or not.

Q. Did you order him to or did the other members of your branch order him to return the charter?—A. We decided to tell him to do that and he is supposed to do what we tell him.

Q. Marosz said he was keeping the charter in his home until he could get it framed?—A. Yes; then he got it.

Q. Do you confirm that statement? Is that right or wrong?—A. Well, I could not be sure whether he got it yet or not. We told him to keep the charter and get it framed. If he not framed, I could not say because I don't know.

Q. Did you attend a mass meeting of various branches of the Communist Party on Sunday December 4th, when Morris Olken of Philadelphia was the principal speaker and at which Alexander Wolkoff presided?—A. I don't been there.

Q. Did you attend a mass meeting on November 9th at Brith Sholom Hall?—A. I been down there once, Brith Sholom Hall, but I don't know this same meeting what you mean.

Q. This was a mass meeting under the auspices of the Communist Party and the principal speaker was Louis Fraina of Chicago?—A. I don't know him. It was once in Brith Sholom Hall meeting and was plenty people that time. It was a Sunday afternoon, but I don't know this is this meeting or this is another kind of meeting, I don't know.

Q. Under whose auspices?—A. It was an English speaker, some kind, but I came late. This was 2 o'clock and I came near 4.

Q. Was this November 9th?—A. I could not be sure, I know there was that Hendin; I guess he was the chairman at that time.

Q. It was a mass meeting of the Communist Party, of Baltimore, wasn't it?—A. I guess. I have advertisement in Jewish and in English. I received that advertisement and then I go to see what is it. I don't know whether it was this meeting or not.

Q. It was in November, wasn't it?—A. If I see the advertisement I would find out. I don't know. I am not sure. I guess in November.

Q. On Sunday?—A. On Sunday afternoon was meeting some kind; was plenty of people down there.

Q. If you attended that meeting don't you know that the principal speaker in English was this Louis Fraina?—A. That is what I came late and he was over the speech.

Q. Were you told that Fraina spoke?—A. Nobody told me. I take a seat and I can not ask somebody been near me, I don't know, stranger people. I can not ask him.

Q. Did you write to the city central committee of the Communist Party here in Baltimore or in Chicago that you no longer desired to be a member?—A. We don't write—I don't write—and this is supposed to be done by the secretary because the secretary is the official—then he got to write this.

Q. On what day did your local take steps to sever your connections as a local with the Communist Party of America, if you took such action? [Through the interpreter.]—A. It was I guess in October, I think. I don't remember what day, but this was in October. We decided to give up because we can not have waste time like that. One man stay home, one man go to meeting, and we give up.

Q. Your membership card shows that you are paid up through November. How should that happen, if you were going to give up in October?—A. We paid before in advance.

Q. This meeting on July 20, last, that I referred to this morning, was that of the Union of Russian Workers? I did not tell you the name of that this morning, but I am referring to it again to give you another chance to say whether or not you made the statement at that meeting that you were considering getting out of the Union of Russian Workers and organizing a Bolshevik branch in Baltimore?—A. I tell maybe I say to some man if he came to me, but I don't been to the meeting and say I am not this and so I am not sure. If I not be I think. I am not a member. If I not pay the money for goods how can I get the goods. Then, if I stopped paying, I am not a member. I find out this is understand more with the Polish people than I do with the Russian people and Polish people got to have Polish country and I am Polish and I have to talk with the Polish people and I go to the union and I get more jobs in the union with the Polish people and sometimes have collection for the Polish hungry and I give him money the Polish Government. If I have a dollar give 50 cents, sometimes I give 5 cents, sometimes 10 cents.

Q. Did you or did you not make such a statement in open meeting on July 20 of the Union of Russian Workers?—A. I did not make that, I did not been, I did not make this kind of statement.

I have here an affidavit made in this city on January 8, by William M. Doyas, special agent of the Department of Justice, which I will read and place in the record for what it may be worth.

Placed in the record, marked "Exhibit JJ."

For the purpose of exemplifying the character and tactics of the organization to which you admit having joined, the Communist Party of America, and in which you hold a membership card, I am going to read extracts from a photostatic copy of the Communist, official paper of the Communist Party of America, dated Chicago, Ill., Saturday, July 19, 1919, entitled "Call for a national convention for the purpose of organizing the Communist Party of America." I read from page 1, as follows:

"In this the most momentous period of the world's history capitalism is tottering to its ruin. The proletariat is straining at the chains which bind it. A revolutionary spirit is spreading throughout the world. The workers are rising to answer the clarion call of the Third International.

"No other course is possible; therefore, we, the minority delegates at the Left Wing Conference, call a convention to meet in the city of Chicago on September 1, 1919, for the purpose of organizing a Communist Party in America.

"This party will be founded upon the following principles:

"1. The present is the period of the dissolution and collapse of the whole world system, which will mean the complete collapse of world culture, if capitalism with its unsolvable contradictions is not replaced by Communism.

"2. The problem of the proletariat consists in organizing and training itself for the conquest of the powers of State. This conquest of power means the replacement of the State machinery of the bourgeois with a new proletarian machinery of government.

"3. This new proletarian state must embody the dictatorship of the proletariat, both industrial and agricultural, this dictatorship constituting the instrument for the taking over of property used for exploiting the workers, and for the reorganization of society in a communist basis.

"5. The present world situation demands the closest relation between the revolutionary proletariat of all countries."

I read from page 2 of this Communist as follows:

"Program of the call.

"1. We favor international alliance of the Socialist movement of the United States only with the Communist groups of other countries, such as the Bolsheviks of Russia, Spartacists of Germany, etc., according to the program of Communism as above outlined.

"2. We are opposed to association with other groups not committed to the revolutionary class struggle, such as labor parties, nonpartisan leagues, people's councils, municipal ownership leagues, and the like.

"3. We maintain that the class struggle is essentially a political struggle—that is, a struggle by the proletariat to conquer the capitalist state—whether its form be monarchistic or democratic republican, and to destroy and replace it by a governmental structure adapted to the Socialist transformation."

I read into your case as evidence and make same part of the record extracts from a photostatic copy of pamphlet No. 1, Manifesto and program, constitution, and report to the Communist International, issued by the Communist Party of America. I read from page 6 as follows:

"There is a common policy that characterizes moderate socialism; that is, its conception of the state. Out of the conception that the bourgeois parliamentary state is the basis for the introduction of socialism developed a directly counter-revolutionary policy. Communism rejects this conception of the state. It rejects the idea of class reconciliation and the parliamentary conquest of capitalism. The Communist Party alone is capable of mobilizing the proletariat for the revolutionary mass struggle to conquer the power of the State. The Communist Party realizes that it is necessary to develop separate organs of working-class political power by means of which to crush the resistance of capitalism and establish the communist commonwealth."

I read from page 8 as follows:

"Strikes are developing, verging on revolutionary action, and in which the suggestion of proletarian dictatorship is apparent. The striker workers try to usurp functions of industry and government, as in the Seattle and Winnipeg general strikes."

I read from page 9 of this "Manifesto and program," etc., as follows:

"The proletarian class struggle is essentially a political struggle. It is a political struggle in the sense that its objective is political—overthrow of the political organizations upon which capitalistic exploitation depends, and the introduction of a proletarian state power. The objective is the conquest by the proletariat of the power of the State. Communism does not propose to 'capture' the bourgeois parliamentary state, but to conquer and destroy it."

I read from page 10 of this pamphlet, photostatic copy thereof, as follows:

"The conquest of the power of the State is accomplished by the mass power of the proletariat."

"The mobilizing of this control against capitalism means the initial form of the revolutionary mass action that will conquer the power of the State."

I read from page 12 of this pamphlet, photostatic copy thereof, as follows:

"The proletarian revolution comes at the moment of crisis in capitalism, of a collapse of the old order. Under the impulse of the crisis, the proletariat acts for the conquest of power, by means of mass action. Mass action concentrates and mobilizes the forces of the proletariat, organized and unorganized; its acts equally against the bourgeois state and the conservative organizations of the working class. Strikes of protest develop into general political strikes and then into revolutionary mass action for the conquest of the power of the State. Mass action becomes political in purpose while extra parliamentary in form; it is equally a process of revolution and the revolution itself in operation."

I read from page 14 of this photostatic copy, as follows:

"The Communist Party is the conscious expression of the class struggle of the workers against capitalism. Its aim is to direct this struggle to the conquest of political power, the overthrow of capitalism and the destruction of the bourgeois state."

"The Communist Party prepares itself for the revolution in the measure that it develops a program of immediate action, expressing the mass struggles of the proletariat. These struggles must be inspired with revolutionary spirit and purposes."

"The Communist Party is fundamentally a party of action. It brings to the workers a consciousness of their oppression, of the impossibility of improving their conditions under capitalism. The Communist Party directs the workers' struggle against capitalism, developing fuller forms and purposes in this struggle, culminating in the mass action of the revolution."

I read from page 15 of this photostatic copy, as follows:

"The Communist Party maintain that the class struggle is essentially a political struggle; that is, a struggle to conquer the power of the state."

I read from page 16 of this photostatic copy, as follows:

"(b) Shop committees shall be organized wherever possible for the purpose of communist agitation in a particular shop or industry by the workers employed there. These committees shall be united with each other and with the Communist Party, so that the party shall have actual contact with the workers and mobilize them for action against capitalism."

I read from page 18 of this same photostatic copy, as follows:

"In close connection with the unskilled workers is the problem of the Negro worker. The Negro problem is a political and economic problem. The racial oppression of the Negro is simply the expression of his economic bondage and oppression, each intensifying the other. This complicates the Negro problem, but does not alter its proletarian character. The Communist Party will carry on agitation among the Negro workers to unite them with all class conscious workers."

I read from pages 18 and 19 of this same photostatic copy, as follows:

"THE PARTY CONSTITUTION.

"1. NAME AND PURPOSE.

"SECTION 1. The name of this organization shall be the Communist Party of America. Its purpose shall be the education and organization of the working class for the establishment of the dictatorship of the proletariat, the abolition of the capitalist system, and the establishment of the Communist Society.

"2. EMBLEM.

"SECTION 1. The emblem of the party shall be a button with the figure of the earth in the center in white with gold lines and a red flag across the face bearing

the inscription, 'All Power to the Workers'; around the figure of the earth a red margin shall appear with the words 'The Communist Party of America' and 'The Communist International' on this margin in white letters."

I read from page 26, from the report of Louis C. Fraina, international secretary of the Communist Party of America, to the executive committee of the international as follows:

"As the international secretary, I make application for admission of the Communist Party of America to the bureau of the Communist International as a major party."

I introduce as evidence in your case and read into the record extracts from a photostatic copy of the manifesto of the first congress of the Communist International, held at Moscow, March 2-6, 1919. Issued March 10, and signed Charles Rakovsky, N. Lenin, G. Zinoviev, Leon Trotsky, Fritz Platten. Text received direct from Moscow. I read from pages 2 and 3 of this copy as follows:

"The communist parties, far from conjuring up civil war artificially, rather strive to shorten its duration as much as possible—in case it has become an iron necessity—to minimize the number of its victims, and above all to secure victory for the proletariat. This makes necessary the disarming of the bourgeoisie at the proper time, the arming of the laborer, and the formation of a communist army as the protector of the rule of the proletariat and the inviolability of the social structure. Such is the Red Army of Soviet Russia which arose to protect the achievements of the working class against every assault from within or without. The soviet army is inseparable from the soviet state.

"Humanity, whose whole culture now lies in ruins, faces danger of complete destruction. There is only one power which can save it—the power of the proletariat. The old capitalist 'order' can exist no longer. The ultimate result of the capitalistic mode of production is chaos—a chaos to be overcome only by the great producing class, the proletariat. It is the proletariat which must establish real order, the order of communism. It must end the domination of capital, make war impossible, wipe out state boundaries, transform the whole world into one cooperative commonwealth, and bring about real human brotherhood and freedom.

"World capitalism prepares itself for the final battle. Under cover of the 'League of Nations' and a deluge of pacifist phrasemongering, a desperate effort is being made to pull together the tumbling capitalist system and to direct its forces against the constantly growing proletarian revolt. This monstrous new conspiracy of the capitalist class must be met by the proletariat by seizure of the political power of the State, turning this power against its class enemies, and using it as a lever to set in motion the economic revolution. The final victory of the proletariat of the world means the beginning of the real history of free mankind."

I read from page 4 of this photostatic copy, as follows:

"Seizure of political power by the proletariat means destruction of the political power of the bourgeoisie. The organized power of the bourgeoisie is in the civil state, with its capitalistic army under control of bourgeois junker officers, its police and gendarmes, jailers and judges, its priests, government officials, etc. Conquest of the political power means not merely a change in the personnel of ministries but annihilation of the enemy's apparatus of government; disarmament of the bourgeoisie, of the counter-revolutionary officers, of the White Guard, arming of the proletariat, the revolutionary soldiers, the Red Guard of workingmen; displacement of all bourgeois judges and organization of proletarian courts; elimination of control by reactionary government officials and substitution of new organs of management of the proletariat. Victory of the proletariat consists in shattering the enemy's organization and organizing the proletarian power; in the destruction of the bourgeois and up-building of the proletarian State apparatus. Not until the proletariat has achieved this victory and broken the resistance of the bourgeoisie can the former enemies of the new order be made useful, by bringing them under control of the communist system and gradually bringing them into accord with its work.

"The proletarian State, like every State, is an organ of suppression, but it arrays itself against the enemies of the working class. It aims to break the opposition of the despoilers of labor, who are using every means in a desperate effort to stifle the revolution in blood, and to make impossible further opposition. The dictatorship of the proletariat, which gives it the favored position in the community is only a provisional institution. As the opposition of the bourgeoisie is broken, as it is expropriated and gradually absorbed into

the working groups, the proletarian dictatorship disappears, until finally the State dies and there are no more class distinctions.

"The proletarian dictatorship, with their cooperation, will retrieve the separation of physical and mental work which capitalism has developed and thus will science and labor be unified. Besides expropriating the factories, mines, estates, etc., the proletariat must also abolish the exploitation of the people by capitalistic landlords, transfer the large mansions to the local workers' councils, and move the working people into the bourgeois dwellings.

"The revolutionary era compels the proletariat to make use of the means of battle which will concentrate its entire energies, namely, mass action, with its logical result, direct conflict with the governmental machinery in open combat. All other methods, such as revolutionary use of bourgeois parliamentarism, will be of only secondary significance."

I introduce as evidence in your case and read into the record certain extracts from a photostatic copy of the proclamation of the Communist Party of America entitled "The Capitalists Challenge You Workingmen."

I read from page 2 of this copy as follows:

"The National Government, the capitalist State, has stepped in. The Steel Trust was in danger of being beaten. It might have to submit before the power of the workers. To save itself, it brought into the field the instrument forged by the capitalists to uphold their system of exploitation and oppression, the State, which in spite of all its democratic pretensions is but the physical expression of the dictatorship of the capitalist class.

"Gather in great mass meetings, bring to the attention of the unenlightened workers the meaning of martial law at Gary. Show them that it is not enough to strike against low wages and bad working conditions, but that the strike must be directed against capitalism.

"The workers must capture the power of the State; they must wrest from the capitalists the means through which the capitalists' rule is maintained."

I introduce as evidence in your case and read into the record certain extracts from a photostatic copy of the proclamation by the Communist Party of America entitled "The State Strike Breaker."

I read from page 1 of this copy as follows:

"Workers, you have been told that the Government of the United States as a government 'of the people, by the people, and for the people.'

"The Communists have told you that it is a Government 'of the capitalists, by the capitalists, and for the capitalists.'

"They made their demands upon the coal mine owners. These capitalists standing alone had no power to resist the demands of the workers. The workers could close the mines and prevent the capitalists from making profits. If they were sufficiently conscious of the way to free themselves from exploitation, they could even take over the mines and operate them, without paying profits to the capitalists."

I read from page 2 of this proclamation as follows:

"The State does not coerce the capitalists; it does not tell the capitalists they must yield to the demands of the miners in order to prevent the stoppage of the mining of coal. The State never coerces the capitalists; its legal machinery is never directed against the capitalist (except occasionally against minor groups or individuals, in the interest of the whole capitalist class). Its Army is never used to destroy the lives of the capitalists. The State coerces the workers. Its legal machinery is used to enforce the demands upon the workers. Its Army is used to destroy the lives of the workers who dare demand a living wage and a little more sunshine and fresh air.

"The Government of the United States, which some workers have been fooled into believing is a government 'of the people, by the people, and for the people,' is in reality the government 'of the capitalists, by the capitalists, and for the capitalists.' It is the instrument through which industrial slavery is maintained.

"The workers can not win their freedom, they can not win even a living wage and a little more sunshine and fresh air, while the capitalists control the power of the State.

"The workers must conquer that power. They must make themselves the ruling class. They must establish in the place of the dictatorship of the capitalists the dictatorship of the proletariat."

I introduce as evidence in your case and read into the record certain extracts from a photostatic copy of leaflet No. 3, issued by the Communist Party of America, 1219 Blue Island Avenue, Chicago, Ill.

I read from page 1 of this leaflet, as follows:

"It should be your shop (or your factory, your store, your mill, your mine, or your railroad), yours to work in, yours to produce in, yours to manage, with the help of your fellow-workers.

"There is enough wealth produced to give these things to all who work. But the capitalists own the shops that should be yours. The capitalists make you work long hours under bad working conditions; they take from you as their profit the lion's share of what you produce.

"They will do that as long as they own and control the shop. There is no hope as long as the shop is not yours.

"The Russian workers organized their power. They created shop committees in every plant and united these in workers' councils. Thus they built up the means for united action. When the crisis came they were prepared to use their mass power. Before their mass power the government of the capitalists and landowners broke up and disappeared. The workers' council became the organs of the working-class government. The workers controlled the State power, the police the army."

I read you from page 2 of this leaflet, as follows:

"Workers, you must build up the organs of working-class power if you are to win your freedom. The shop organization is the basis for the organization of the mass power of the workers. Prepare to take control of your shop, of your work, of your lives and happiness. Organize and make it your shop."

NOTE.—The photostatic copies themselves, extracts from which have been read into the record, are not placed in this particular record as exhibits because of their scarcity, but the originals will be found in the case of Andrew Marosz, warrant of arrest No. 54860/351.

By Attorney MORROW:

Q. Truss, you heard those extracts. Did you understand what was being read to you?—A. I understand some part.

Q. Have you ever seen those papers, parts of which have been read to you?—A. No.

Q. Do you subscribe—do you believe in the things that Mr. Archibald has just read to you so far as you understand them?—A. I could not say this or that because I did not understand everything. I could not say whether I believe or don't believe. This thing what reads here I hear this the first time. I received some kind of proclamation, the advertisement like that, and I had this, but I don't write for this because I don't read it.

Q. What was it, an advertisement to write on and get some of these paper that you say?—A. I received here the bundle, I see that it is in the bundle which was sent from Chicago.

Q. This is what you are referring to [Exhibit L]?—A. eYs.

Q. Did you read these?—A. I look over, but this mail say we supposed to order this. We don't order because we don't have no meeting and we not decide to order.

By Inspector ARCHIBALD:

The evidence in your case fairly shows that you were connected with the Union of Russian Workers, even though you deny that. Your name appears on the book of the secretary, the man who admitted he was secretary in his own case, and shows that dues at least were paid through March, 1919. You of course, have denied membership in that union, but have admitted belonging to the Russian Workers' organization, which merged in a body into the Union of Russian Workers. On that premise and to show the character of the Union of Russian Workers I will read certain extracts from a publication of the Federation of Unions of Russian Workers of the United States and Canada, New York, last year, entitled "Nowomirsky—Manifesto of Anarchist—Communist." I will read from the next to the last and the last page of a complete translation of that pamphlet, the complete translation being placed in the record and marked "Exhibit KK," as follows:

"We hate religion because it lulls the spirit with lying tales, takes away courage and faith in the power of man, faith in the triumphs of justice here on the real earth and not in a chimerical heaven. Religion covers everything with fog; real evil becomes visionary, and visionary good a reality. It has always sanctified slavery, grief, and tears. And we declare war upon all gods and upon religious fables. We are atheists.

"We hate slavery in all its forms. And is a 'free workman' not a slave? Does the knout of the master not hang over the head of the proletariat?

The workman has ceased being a slave of one lord, of one master. But is he not the slave of the whole class of masters? Let the present-day slave rise and cast off his horde—it is all the same; hunger will drive him to another master, and the collar of perpetual toil, hunger, and slavery will be tightened upon him anew. It is necessary to tear up by the roots the division of people into lords and slaves. We are communists.

"We hate authority, that eternal preserver of slavery and foe of freedom. The lords having been destroyed, why leave the whip of the lords; the power of capital having been destroyed, why allow its safeguard, the State, to remain? Does giving man bread mean depriving him of freedom? Even pigs in their sty have food. Not to the happiness of citizenship do we call the workers—we call them to liberty—to absolute liberty. We are anarchists.

"To you we address our speech, our brother workman. Wake up, look around you. See how poor and degraded you are. Remember that you are a man, and that you—you created all that world of wealth. Understand that the workers of all countries are your brothers, and that you all have one task—to destroy the world of gain and create a world of freedom; for all there is one means—an armed insurrection and forcible seizure of all instruments and all products of toil. Woe to the enemies of the laboring class."

That is an official publication of the Federation of Unions of Russian Workers, and fairly shows their tactics and teachings.

By Attorney MORROW:

Q. Did you ever see this that has just been read to you?—A. No.

Q. Did you ever hear it?—A. No.

Q. Do you believe in the things that have just been read from this book?—

A. I believe in a God; I don't believe I shall hate religion.

Q. You don't believe you shall hate religion. Do you hate religion?—A. What man would?

Q. Do you hate to have anybody who is an official of the Government have any authority over you (through the interpreter)?—A. No.

Q. Are you an anarchist?—A. No.

Q. Do you know what an anarchist is?—A. I don't know what is.

Q. You don't know what an anarchist is; you don't know what it means?—A. I don't know, but he reads that they say hate religion. If this is anarchists who are not religious people.

Q. An anarchist does not believe in government. Anarchy believes in the absence of all organized government?—A. How can we do without government? (Hearing adjourned until to-morrow morning 10 o'clock.)

JANUARY 20, 1920.

Hearing resumed; same appearances.

By Inspector ARCHIBALD:

I have here a report taken from the official files of the Department of Justice in Baltimore, which I will read and place in the record as Exhibit LL for what it may be worth.

Q. Truss, you testified yesterday that you were not present at this meeting of July 20, held from 10 a. m. to 3 p. m. (a meeting of the Bolsheviks at Fisher's Hall. I will ask you now again whether, after hearing this report read, your recollection is refreshed. Were you or were you not present at that meeting?—A. I don't been there.

Q. Were you ever a member of the Bolsheviks?—A. No.

Q. Of the Bolshevik Party?—A. No.

Q. Did you ever at any meeting announce that you desired to withdraw from the Union of Russian Workers and reorganize the Polish branch of the Bolsheviks in Baltimore?—A. No.

Q. Were you ever a member of the Union of Russian Workers?—A. I not been a member of that union.

Q. You were a member, were you, of the Russian Workers' Organization?—A. Yes; I was in the Russian Workers Organization a member.

Q. Did not the Russian Workers' Organization become affiliated with the Union of Russian Workers?—A. No; I not been a member in that.

Q. Didn't the Russian Workers' Organization go into the Union of Russian Workers?—A. I heard that they go in and I don't know how they decide, if they decided to go in I not been in that meeting. I heard that they say they

have Union of Russian Workers. Then I think I don't know what kind this organization was down there. If I got to belong somewhere, I got to understand the organization idea. If I don't believe, what is the use me belonging, if I don't know. I stopped paying and going to the meeting. I believe that it is no use for me to go to the meeting.

Q. Did you have a little membership book in the Russian Workers' Organization?—A. Yes; I had.

Q. What kind?—A. It was a white one.

Q. Do you know whether that same white membership book was used by the Union of Russian Workers?—A. No; they had different book.

Q. What kind have they?—A. They have a blue book with name Union of Russian Workers. It was a blue book, bigger size, and those members who belong to this organization have this kind of book. Long as they get the other book and I never received any book because I don't want it.

Q. You never received it?—A. I never received this kind of book.

By Attorney MORROW:

Counsel for Truss states that no book answering the description of Truss, any blue membership book in the Union of Russian Workers was found among the papers taken from his house.

Q. It has been stated, Truss, that the organization of Russian Workers went into the Union of Russian Workers in the early part of 1918; did you know that?—A. I don't know.

Q. When did you know that the Organization of Russian Workers had gone into the Union of Russian Workers?—A. They showed me different membership card.

Q. That is the first time?—A. Yes.

Q. When was that, do you know?—A. I don't remember good, but long as I know that they have different organization, I not been member down there, long as I know that they have a different card for this organization, but for the other organization, or something like that, we find out it is different organization, then I not go down there and I have nothing to do with that organization.

Q. Since the date stamped on this card, March 1, 1919, have you paid any dues or attended any meetings of the Organization of Russian Workers or the Union of Russian Workers?—A. I been see down there sometime when they go and so I see them and sometimes I stay in the street. I see they have a meeting, but I never interested down there. I leave them alone because I am not a member down there and is no use for me to go down there. I don't remember; if I not a member, I shall go to the organization and see.

Q. Answer the question. Did you pay any more dues after March 1, or did you attend any meetings after March 1, 1919?—A. No.

Q. Do you know whether there is any other man in Baltimore named Truss?—A. I don't know.

By Inspector ARCHIBALD:

Q. As long as the question has been reopened, did you pay dues on March 1, 1919?—A. I don't pay dues down there. The secretary personally saw me in the street, and that book was in the secretary's hand, and after while he gave me this book and said you supposed to get new book, and I say what kind, and he say different kind now.

By Attorney MORROW:

Q. Mr. Archibald asked you whether you paid on March 1 the dues that are stamped in that book?—A. No.

By Inspector ARCHIBALD:

Q. I remember that you told your attorney that you had not paid since then.—A. This was paid in advance.

Q. Did you pay on March 1, 1919, in advance?—A. I don't know.

Q. When did you last pay?—A. I don't know.

Q. You remembered that you had not paid since back in 1917?—A. This is not very important question for me that I shall remember what date I pay, which day, and so on. This was not important for me.

Rev. PAUL FOX, witness, being first duly sworn, testified as follows in reply to questioning:

By Attorney MORROW:

- Q. Mr. Fox, will you state your full name?—A. Paul Fox.
- Q. What is your nationality?—A. Polish.
- Q. From what part of Poland did you come?—A. Originally from the eastern part of Poland, Teschen.
- Q. How long have you been in the United States?—A. Twenty-four years.
- Q. Are you a citizen of the United States?—A. Yes.
- Q. When did you get your final papers?—A. 1904.
- Q. What is your business or profession?—A. Clergyman.
- Q. Of what church?—A. Presbyterian.
- Q. What particular church?—A. St. Paul's Presbyterian Church here in the city.
- Q. Do you know Thomas Truss?—A. I do.
- Q. For how long have you known him?—A. I have known him since 1910, when I first came to this city and took up the work here.
- Q. Is he a member of your church?—A. He is.
- Q. Is he an active member?—A. Yes.
- Q. Has he any official position?—A. He is an elder of my church.
- Q. When was he ordained?—A. In 1916 when the church was organized.
- Q. Have you had a church there prior to 1916?—A. Not an organized congregation.
- Q. Was a mission there?—A. Yes; a mission.
- Q. Do you know Truss intimately?—A. I know him about as intimately as I presume any pastor can know any of his active members in the church.
- Q. Do you know his political or social views?—A. Yes.
- Q. Have you discussed questions of politics with him?—A. A number of times when I first came to the city and became acquainted with him we talked about social, industrial, and different political questions a number of times.
- Q. Have you discussed these questions with him since that time?—A. I presume here and there. I don't have a particular remembrance on any particular instance when we talked about such questions, but in our relation those matters do come up from time to time, and as far as I remember anything, he has not revealed any views which would have been different from his former views.
- Q. You spoke of his former views. What would you say briefly were what you call his former views?—A. When I first came to the city and became acquainted with Mr. Truss, I knew him to be a Socialist, interested in social and industrial questions. As far as his political views are concerned, he did not at any time reveal any radical opposition to organized government?
- Q. What do you mean by radical opposition to government?—A. By radical opposition I mean what is at present regarded as violent overturning of organized government.
- Q. From your knowledge of Truss would you say that he was a man who would make a good citizen of the United States?—A. I do.
- Q. Would you say, from your knowledge, would you say that he was dangerous to the Government of the United States?—A. I would not.
- Q. Would you say that he was dangerous to organized government?—A. I would not.
- Q. Do you have at your church, Mr. Fox, any Americanization class?—A. We have had them from the very beginning of our work in the city here. We have had English classes, and the textbooks which we have used in our English classes have been invariably textbooks which acquaint the students not only with the English language, but also with the institutions of our country and with the principles of our Government.
- Q. Has Truss taken any interest in these English classes?—A. As far as Truss is concerned, as far as I recall, I do not think he has been a member at any time of one of our English classes, because he had attended English classes in the evening school on Bank and Broadway.
- Q. Is that a public school?—A. A public school. However, I would add here that as far as other activities of the church are concerned, our general lectures, which are also intended to acquaint all the foreign citizens with our institutions, he has attended faithfully.
- Q. Is your congregation composed entirely of Poles?—A. Entirely.
- Q. Are you in intimate touch with the Polish questions—Polish situation in this city?—A. Yes; I am.
- Q. You know where Truss came from in Poland, do you not?—A. Yes.
- Q. Is that at the present time a part of Russia or is it a part of the new nation of Poland?—A. I am not in a position to answer this question absolutely

definitely, because I have not looked up the present eastern boundaries of Poland, but from Mr. Truss's statement that he comes from the government of Lublin I should judge that it is within the present boundaries of new Poland.

Q. From your knowledge of the Polish people in Baltimore, do you know whether the Poles in Baltimore, whose place of nativity is within the new Poland, are, generally speaking, sympathetic with Soviet Russia or not?—A. From my knowledge of the Poles, their political views and their temperament I can say that they are not sympathetic with Soviet Russia. In fact, as far as present Poland is concerned, it is fighting the Soviet Government and the Bolshevik influence in Europe. The Poles here in this country have really nothing in common with the Russian bolsheviki.

Q. From your knowledge of Truss can you state whether or not, in your opinion, he is in favor of orderly processes of government?—A. I can state most positively that he is in favor of orderly processes of government.

By Inspector ARCHIBALD:

Q. How long have these Americanization classes been held or conducted in your church?—A. From the very beginning of our work, in 1910.

Q. I understood you to say that Mr. Truss has not attended those classes or showed no specific interest in them.—A. He has not as far as I recall. He has not been a member of our English classes because he had attended the English classes in the public school, but he has attended our general lectures, which have had the same object in view.

Q. Those are in the Polish language?—A. In the Polish language, but present our American institutions, our American life, and our social and industrial conditions and history.

Q. And do those lectures, as well as at the Americanization classes, tell the people how they can become citizens of this country?—A. Yes.

Q. Despite that, you know, do you not, that Mr. Truss has not declared his intention yet to become a citizen?—A. I found out during the recent proceedings that he tried, as he has stated, to get his first papers several years ago, but not knowing the exact date when he arrived in this country he was unable to secure them and has not made any particular effort to get his first papers since.

Q. Don't you teach or tell your people in these classes just how they can obtain the information as to when they arrived in this country?—A. They do.

Q. And Truss has heard those instructions, I presume?—A. Well, of course, we don't state the same things at every lecture or in every class. I should think that he probably has heard.

Q. Did you know that he belonged to the Russian Workers' Organization?—A. I did not know that.

Q. Did you know that he belonged to the Union of Russian Workers?—A. I did not know that.

Q. Did you know that he belonged to the Communist Party of America?—A. I did not know that.

Q. You heard extracts read here yesterday, being attendant all day, from the "Manifesto, Program, and Constitution of the Communist Party." In your mind would you characterize a party having such a constitution as one inimical to the interests of this country?—A. I would.

Q. Have you made the charge publicly recently, or frequently, that the arrest of Truss and others was a matter of religious persecution?—A. I have not made the charge. I don't think I have made it publicly. I have, to a certain extent, suspected that there was something of that sort in it.

Q. Whom have you stated your suspicions to?—A. To our official board, our home missions committee. The reason I did that is because during the war, or rather to go still further back, prior to the war, we were repeatedly charged by those professing the Roman Catholic Church that we were Americanizers and that St. Paul's Church was an American church endeavoring to Americanize the Poles and by that they mean to nationalize them. Our work has never been for the purpose of driving away any members from the Roman Catholic Church who faithfully believe in the Roman Catholic Church and adhere to it. There is, however, a very large number of Poles in this country under the authority of the Roman Catholic Church; about one-third of the Poles, however, in this country are not affiliated with the Roman Catholic Church. They are drifting into what I would call irreligion. Consequently, we feel that it is better to interpret religion to them from a different standpoint rather than to leave them drift into infidelity. As I have stated, those

loyal to the Roman Catholic Church have always assumed a very hostile attitude toward us and toward our work. To repeat once more, prior to the war we were being described by the Roman Catholic Church before the Polish constituency as Americanizers. During the war we were charged with pro-Germanism and disloyalty and a number of the people were reported to the Department of Justice as pro-German or disloyal to our country. After the war, when at the present time of social, industrial, and political unrest, there seems to be quite a good deal of uneasiness about so-called radicalism or bolshevism. The suspicion seems to be thrown upon some of the people that either attend our church or our various educational classes or are members of our classes of being radicals. Consequently, it has been perfectly natural and perfectly legitimate for me to infer that, knowing of the propaganda against our work, there has been an influence other than simply patriotic in it.

Q. How many members, then, bearing out your suspicion and to make it logical, of your congregation have been arrested on charges similar to Truss?—A. As far as actual members are concerned just two.

Q. And have you heard how many Russians or Poles have been arrested in this city altogether on those or similar charges?—A. Well, as far as I know, Mr. Archibald, during the war on charges of pro-Germanism—

Q. Please restrict your answers to my questions. (Question repeated by stenographer.)—A. From statements in the papers, I should say off-hand that quite a number although the exact number I do not know, because I have not made any efforts to actually count them.

By Attorney MORROW:

Q. Do you know whether any of the Poles, any of the men who have been arrested in these recent raids, while not members of your church, have been attendants at your church?—A. None. Kufel has been sending his little daughter to our kindergarten. He came once in a great while. He was not a member and not a regular attendant. Mr. Truss is the only member of our church.

(Rev. Paul Fox sworn as interpreter for the purpose of examining the following witness:)

ADAM LATOWSKI, witness, being first duly sworn, testified as follows through the interpreter:

Q. State your name in full?—A. Adam Latowski.

Q. What is your nationality?—A. Polish.

Q. Are you a naturalized citizen?—A. First papers.

Q. When did you obtain those?—A. Two years ago.

Q. Do you know Thomas Truss?—A. Yes; 11 years.

Q. Where did you become acquainted with him?—A. When I worked at the copper works.

Q. Are you related to Truss?—A. Yes.

Q. What relation?—A. He is my son in law.

Q. Did Truss ever live with you?—A. Four years and a half.

Q. Do you know Truss's political or industrial views?—A. No.

Q. State briefly your opinion of Truss's character generally?—A. As far as I know Truss he is an honorable man. I have never heard him say anything against this Government.

Q. Do you think Truss is dangerous to the Government of the United States?—

A. I don't know because I have never heard anything of that sort.

Q. Do you think Truss is dangerous to organized government generally?—A. I don't know.

Q. Are you a Bolshevik?—A. I don't know what a Bolshevik is.

Q. Are you a Socialist?—A. No (pointing to a service badge on his coat) this is my socialism, I have given a son to this country.

Witness excused.

By Attorney MORROW:

Counsel for Truss desires placed in the record the statement of Mr. Archibald that he could produce five men to testify that Truss was a member of the Union of Russian Workers.

I hereby certify that the foregoing is a correct transcript of the shorthand notes taken by me verbatim at the hearing accorded Thomas Truss at the time and place specified herein.

HARRY FRIEDMAN,
Clerk (Stenographer).

BALTIMORE, MD., January 27, 1920.

Mr. Post. And I also ask, Mr. Chairman, that inasmuch as there appears here in this report [indicating] the brief of the immigrant inspector at the port of Baltimore—which is a perfectly proper thing, but it is a brief, in support of his position there; and his position is only that of an advocate; it can not be anything else, for he has no judicial authority. In consequence of that being in the record, I also ask to be allowed to put in the record the brief—the argument of the attorneys in Baltimore who represented this man in the Truss case.

The CHAIRMAN. Do you mean an outside attorney who has not appeared here?

Mr. Post. An attorney who appeared in the Truss case. Let me make myself clear, Mr. Chairman: In this case there is put into the record before you (taken out of our records) the immigrant inspector's report, which is in the nature of a brief.

The CHAIRMAN. He is a Government official, is he not?

Mr. Post. He is a Government official, but not acting as a Government official when he does that. He has no authority whatever to act for the Government in any other way than to conduct the examination. Now, I am not objecting to that; that is a good thing to have in here.

Then they have put in the record the memorandum that was made, and my decision. Now, whether my decision was a sound one or not depends, not a whit on any of these things, but upon the evidence in the case; but inasmuch as they put in these arguments, I submit that I am entitled to have the benefit of the argument (which was a very good one) of the attorneys, who were one of the leading firms of Baltimore—to put that in along with the evidence. Then you will have the whole Truss case before you, and you will know what the Truss case meant. That is the principal case and the one I have spoken of as the one that is typical of nearly all the cases.

The CHAIRMAN. The committee will take that under consideration. (The matter referred to is as follows:)

CASE OF THOMAS TRUSS UNDER DEPARTMENT WARRANT No. 54860/67, DATED JANUARY 9, 1920—DEPARTMENT OF LABOR.

A PERSONAL WORD FROM COUNSEL.

Because of the great importance which we attach to this case, we desire to preface our brief with this statement in the hope that our earnestness in this matter may compel the attention of those charged with its disposition to a very careful and exact study of the record and this brief. If we are able to secure this kind of close attention to the case, we are confident that there can be no such grave miscarriage of justice as now seems to us to be threatened.

Our motive in defending the alien, Thomas Truss, is not mercenary. We are participants in no so-called "slush fund"; the fee which we have received comes from American citizens and the amount of it is \$100. This fee, together with any additional charge which we may make, will be entirely inadequate, measured by the standards of our practice, and whether or not we receive any additional compensation is relatively unimportant to us. We are all American-born citizens. We love our native land with fervor. Her institutions and ideals are dear to us, and the thought that our country may lay ruthless hands upon the stranger whom we have invited to our shores and cast him out without a fair and impartial hearing and without regard to his guilt or innocence, brings to each of us the pain of a personal hurt.

We are convinced beyond a reasonable doubt, not of the guilt, but of the innocence of the man we are defending.

With this conviction deeply held we press this case from motives of patriotism rather than of business, and if our efforts result in what seems to us the triumph

of American justice and the maintenance of American ideals and institutions, we shall feel that this one case justifies to ourselves our existence as practicing attorneys and to our country the existence of our profession.

STATEMENT OF FACTS.

Thomas Truss was born in Cholm, Lublin Gubernia, in Russian Poland, about 33 years ago. (Record, p. 2.) He was a subject of the Czar of Russia and of a class of Russian subjects held in merciless subjugation and under constant fear of tyrannous persecution. He was not permitted to speak his native Polish language, and was subjected to all of the despotic authority of the Russian monarchy over the unfavored class of its subjects. (Record, p. 38.) In this environment he lived for 20 years, at which time he emigrated to America, where he understood a man was allowed to live and work in happy peace and freedom. He landed in Baltimore from the North German Lloyd steamship *Cassell*, and has since that time continually resided in Baltimore. (Record, pp. 38, 1.)

Some time after his arrival in this country he met as a fellow worker in the Baltimore Copper Works Adam Latowski, whose daughter, Helen, he married some time during the year 1910. For about 4½ years Truss and his wife lived with his father-in-law, and since that time he has lived in his own home. (Record, pp. 3, 63.) At the time of his arrest, as hereinafter recited, he had three children living, Annette, 6 years old; Toofil, 4 years old; and Tedius, 7 years old. (Record, p. 3.)

About eight years ago, in order to obtain a position in a clothing factory, the shop of which was organized in the Industrial Workers of the World, he joined that organization. Some two years later he obtained a better position in another clothing factory, after which time he ceased to be a member of the I. W. W. During the time that he was a member of the I. W. W. he was arrested once during a strike and was fined \$1 and costs. (Record, pp. 21, 34, 39.)

For a short time Truss was a member of the Polish section of the Socialist Party, branch No. 8. He gave up membership in this organization about eight years ago. (Record, p. 8.)

About 10 years ago this alien began attending the services of the mission of the Presbyterian Church, now organized as St. Paul's Polish Presbyterian Church, and in 1916 when that mission became an organized church he was ordained an elder. He has been a consistent and active attendant, member, and official of that church since the time he first began to attend its services, interested in its activities and a regular attendant at lectures given under its auspices, which lectures always dealt with and sought to instill American ideals and institutions. (Record, pp. 59, 60.)

Men of unquestionable integrity and secured position in the community testified that from their acquaintance with the alien they did not regard him as dangerous to the Government of the United States or to organized government generally, and that they considered him to be the kind of a man who would make a good citizen of the United States. (Record, pp. 11-15, 59-61, 63.) His wife paid a high tribute to his character. (Record, pp. 28, 29.)

Six or seven years ago he made an attempt to secure first citizenship papers, but was unsuccessful because he could not state the date when he arrived in this country. He did not make any other effort to secure citizenship papers. (Record, p. 8.)

Truss believes in education. He has many books on a variety of subjects in addition to the books and pamphlets seized by agents of the Department of Justice at the time of his arrest. He has subscribed to a Liberty bond, contributed \$5 to the Red Cross, and contributed to regimental and other patriotic funds. His brother-in-law volunteered for service in the United States Army during the recent war, and died in a hospital in Washington from wounds received in battle. (Record, pp. 40, 29.)

Some time in 1917 Truss became a member of the Russian Workers organization, a fraternal body having no program of political principles or activities. He continued a member of this organization, according to his testimony, until the end of the year 1918, when he learned that it had become merged in the Union of Russian Workers, and he then ceased to attend its meetings or to pay any dues. His membership card in the organization of Russian Workers was stamped with payment of dues up to and including March 1, 1919, but he denied that he had ever paid any dues in 1919, or attended any meetings after the end of 1918 when he learned of the merger into the Union of Russian Workers.

A black-covered account book was shown to the alien by the inspector of immigration presiding at the hearing, who stated that this was the record of members and payment of dues of the Russian Workers organization for a period extending beyond the merger of that organization into the Union of Russian Workers, and this book also showed the entry of payment of dues by "T. Truss" up to and including March 1, 1919. (Record, pp. 17-19, 33.)

At the time of his arrest, Truss was the president of his local of the Amalgamated Clothing Workers of America. (Record, p. 35.) Some time in July a member of his local called his attention as president to the fact that a Socialist name Pinski was in Baltimore in connection with a lecture tour and that he could be secured to speak to the Amalgamated Clothing Workers. Upon motion duly adopted at the meeting of the local of the Amalgamated Clothing Workers of America when this matter was brought up, it was decided to hold a mass meeting at which Pinski should be the speaker and Truss was one of the committee to make arrangements for this meeting. The meeting was duly held on August 13, 1919, and no other subject than the general industrial movement was discussed. At the request of Pinski, Truss, as president of the local under whose auspices the meeting was held, announced that on the following evening at a certain hall, Broadway and Eastern Avenue, an organization meeting of the Communist Party of America would be held and anyone present interested was invited to attend. In company with other members of his local, Truss attended this organization meeting. (Record, pp. 4-5, 35, 36.)

As explained by Pinski, the objects and purposes of the Communist Party of America were the dissemination of lawful and well-understood socialistic principles. The revolutionary doctrines promulgated in the constitution and manifesto of the Communist Party of America introduced in evidence were not touched upon. At this meeting, Truss, in company with five or six other men, signified his willingness to become a member of the Communist Party of America. On this occasion Pinski promised to send another speaker to explain in detail the principles of the Communist Party. (Record, pp. 6-7, 36-37, 39.)

The members who signified their willingness to join the Communist Party were considered the nucleus of a branch of that party to be known as the Polish branch in Baltimore of the Communist Party of America. (Record, pp. 6-7.)

These six or seven men met informally several times, and some of them acted as temporary officers of the branch in process of organization. Truss was not one of these temporary officers. Membership books were issued for which an initiation fee was paid and entered on the book and membership dues were paid for a month in advance. The last payment of dues by Truss was made in October, 1919, for a month in advance. A charter for the branch was received by the temporary secretary, which Truss saw in a bundle of papers and which he suggested should be framed and hung on the wall of the meeting place. (Record, pp. 6-7, 16, 40.)

The speaker promised by Pinski never came; the constitution of the Communist Party was never received, and the principles of the party were never brought to the attention of Truss further than they were enunciated at the organization meeting addressed by Pinski. The organization of the branch so attempted to be created was never completed. There were no further accessions of members, and after November, 1919, the small group discontinued to meet, and the whole project was dropped, so far, at least, as Truss was concerned. (Record, pp. 6-7, 39-40.)

Truss never saw or read or heard read the constitution and manifesto of the Communist Party of America introduced in evidence in this case. He was entirely ignorant of the true character of the party he was induced to join by the organizer, Pinski, and he was at that time, and still is, unqualifiedly opposed to the tenets of any party advocating direct action as the means for changes in the political structure. (Record, pp. 54, 37.)

The alien's political and social views briefly stated are these: He is a Socialist. He believes in Government ownership of essential industries. He believes in representative government, and as the means to accomplish the principles of socialism in the Government, he believes in the nomination and election through existing political institutions of the candidates of the Socialist Party. He regards the Government of the United States as a good Government and has no desire to change its representative form. He does not desire the overthrow of the Government of the United States, or of other organized forms of government, by force or violence and believes in the ballot as the means for the accomplishment of political change. He is satisfied with his

liberties in this country and desires to become a citizen of it. (Record, pp. 36-38.)

On January 7, 1920, Truss was arrested by direction of agents of the Department of Justice and held at the western police station, of Baltimore City, for two days without any warrant having been issued for his arrest. On the evening of his arrest agents of the Department of Justice went to his home and without warrant took possession of such of his books and papers as they desired to have. (Record, pp. 3-4, 19.)

On January 9, 1920, a warrant was issued by John W. Abercrombie, Acting Secretary of Labor, directed to Bertram N. Stump, Commissioner of Immigration, Baltimore, Md., or to any immigration inspector in the service of the United States, authorizing the arrest of Thomas Truss, "who landed at an unknown port on or about the 1st day of January, 1919," for violation of the immigration act of October 16, 1918. (Record, p. 1.)

Extracts from a paper purporting to be a photostatic copy of the constitution and manifesto of the Communist Party of America, which extracts tend to establish the revolutionary character of that organization, were read into the record by the inspector of immigration presiding at the hearing. (Record, pp. 46-53.)

Extracts from a document purporting to be a publication of the Federation of Unions of Russian Workers of the United States and Canada were also read into the record by the said inspector of immigration and the document itself is filed as Exhibit KK. These extracts are couched in a hyperbole of inflammatory expression distinctly atheistic and anarchistic in character. (Record, pp. 54, 55.)

These are all of the facts. Much was interjected into the record by way of innuendo, but an examination of the record will fail to disclose any other facts than are here stated. These facts are set forth in this statement as the facts of the case disassociated from the "atmosphere" of the hearing, and it will be our main purpose in this brief to connect up these facts with the "atmosphere" of the case for the purpose of determining whether Thomas Truss has violated the immigration act of October 16, 1918.

OBJECTIONS TO INTRODUCTION OF CERTAIN DOCUMENTS IN EVIDENCE TO QUESTIONS PROPOUNDED TO ALIENS, ETC.

1. We object to the reading into the record of the printing appearing on the membership card bearing the name of Truss, if intended for the purpose of binding him to said statement, it not having been shown that he signed, read, or had read to him the said card. (See record, pp. 5, 6.)

2. While the record is exceptionally well transcribed under the circumstances, we object to the transcription of the answer to the last question on page 8, said answer continuing on page 9, as being misleading. The answer to this question was to the effect that according to the witness's understanding of the speech referred to by him the communists believed in bringing all classes of essential industries under Government control. The word "that," at the end of the third line on page 9 of the record, to represent the real meaning of the witness, should constitute the beginning of a new sentence.

3. We object to the following question on page 17 of the record, namely: "Some time in 1918, from testimony in many cases, the Russian workers' organization in this city became a Union of Russian Workers because there were several branches formed," because said question is the statement as a fact of matter not then proved, and, in fact, never proved in this case, and concluding apparently with a statement of the inspector's opinion.

4. We object to the question on page 18 of the record, beginning, "I have before me the book of the financial secretary," because it assumes as fact matter not proven.

5. We object to the transcription of the answer to the last question on page 25 of the record, said answer appearing at the top of page 26, and state that the witness in his answer to this question again repudiated the intimation that he had invited Pinski to come to Baltimore for any meeting.

6. We object to the introduction into this case of the transcript alleged to be a copy of a secret examination of Truss by officials of the Department of Justice conducted on January 8, 1920, at which examination the accused was not allowed the benefit of counsel, and where the examiner, the stenographer, and the interpreter were unsworn.

7. We object to all affidavits made by officials of the Department of Justice because it appears from said affidavits that they are made merely upon in-

formation and belief, and further because the original source of information of the matters contained therein should have been produced. We also object to the records of the Department of Justice introduced in evidence because they are not the best source of information for the matters contained therein, are not sworn to, and are not even proved to be official records of the Department of Justice. Copies of these affidavits and reports are not included in the copy of the record sent us. Our objection is, therefore, generally to all such affidavits and reports as may appear in the record.

ARGUMENT.

The questions presented by this record are these:

1. Is Truss guilty under the warrant?
 2. Did Thomas Truss become bound as a member of the Communist Party of America?
 3. Assuming the answer to the second question to be affirmative, does Truss come within the meaning and spirit of the act?
 4. Was Truss a member of the Union of Russian Workers?
 5. Has Truss otherwise violated the act of October 16, 1918?
- We shall discuss these questions seriatim.

(1) Is Truss guilty under the warrant?

It is impossible that Truss is guilty under the terms of the warrant, because the warrant charges that he landed at an unknown port on or about the 1st day of January, 1919, and the undisputed evidence is that he landed at the port of Baltimore about 13 years ago.

A proceeding to separate him from his wife and his three children, born American citizens, and to break up an American home established for 10 years, is essentially different, at least in its effects, from a proceeding to send back to his native land a newly arrived immigrant.

(2) Did Thomas Truss become bound as a member of the Communist Party of America?

The answer to this question involves the meaning of binding membership in an organization. If a man comes to one's office or home and at the point of a pistol demands signature to a membership card of an organization, the tenets of which are unknown to the victim and definitely opposed by him, it would scarcely be seriously contended that the victim had become a member of the organization in such a way as to bind him to it. In other words, binding membership includes more than the naked fact of signature to a membership card or the naked fact of one's name on the rolls of an organization.

Real, actual membership in any society signifies that one has willingly come into the fellowship of the organization knowing what it is and what it stands for and subscribing to its aims and purposes.

If this be so, it follows that if the membership card is secured by fraud practiced upon the person whose name is sought instead of by threat of personal violence, he is not bound by the act of "joining" and is no more really a member in the one case than in the other. For example, if by representations of an agent of an organization called, let us say, the Maryland Club, one is induced to join what one is led to believe is a club for the promotion of social intercourse among a selected circle of the community, and the fact is that instead of being a club organized for such purpose its real aid and object is the destruction by killing off of all persons not within the radius of the selected circle, the victim so "joining" the club is not bound as a member of a murder club.

To state the matter briefly, the test whether one is or is not bound as a member of an organization is not simply whether or not he has allowed his name to be placed upon its books, but whether he has done so as an indication of his own will to accept its principles and its laws.

If this proposition be conceded, as it seems to us it must be, then the alien, Thomas Truss, is a member or is not a member of the Communist Party of America so as to be bound by his membership according as it may be determined whether or not his act of "joining" expressed his own free will and design to adopt the principles and to be bound by the laws of this association.

There is but one source for the determination of this matter, and that is the record of the investigation. Every free government since the days of Magna Charta has held inviolable the principle that there shall be no penalty imposed by the sovereign for an act not proven to have been committed, and the arbitrary assumption of guilt without proof thereof has its place only in despotic tyranny. It never can find lodgment in the mental processes of an impartial

judge, but, on the other hand, it is almost inevitable that it will raise its ugly head where the judge and jury also prosecute the case.

Examining the record with the closest scrutiny or even with the greatest laxity, we submit that it shows beyond a reasonable doubt that Truss never became bound as a member of the Communist Party of America. His brief membership was the expression of the will and design of Pinski and not the will and design of Truss.

(3) Assuming the answer to the second question to be affirmative, does Truss come within the meaning and spirit of the act?

The assumption upon which this question is based seems to us to be an impossible assumption, because we regard it as impossible for any trained mind, after a study of the record in this case, to answer the second question in the affirmative.

Making this impossible assumption, however, for the sake of the argument, it seems to us to be almost self-evident that the law never was intended by Congress to apply to the case of a man who became a member of one of the prohibited organizations under a clear misapprehension of what the organization stood for, who never was active as a member or as a propagandist, who never, by word or deed, or even by thought, advocated the overthrow of the Government, who as one of six or seven Poles, socially minded, was led into membership in an organization he never understood or designed to enter, whose whole membership consisted in attending with the six or seven other members informal gatherings not participated in by any other persons and tending to nothing but an ineffectual attempt to find out the real character of the organization he had been induced to join and who finally discontinued his membership and ceased to pay any dues more than two months before his arrest.

To assume that Congress did intend that the law should apply to such a case leads to but one conclusion. It means that this country, upon the passage of the act, declared to the world that it invited foreigners to its shores, but if any came and thereafter, in total ignorance of the true situation, were led by some silver-tongued orator of an unlawful and undesirable organization to join that organization they could expect to be deported from this country irrespective of whether or not they were law abiding and had the deepest respect and reverence for the institutions of the United States.

In the Truss case such an assumption would lead to even more unthinkable conclusions. It would mean that this country declared to the world when it passed this act that, although its history and traditions were founded and made glorious by the fact that it held out its arms to the persecuted of every white race upon the earth and said to them, "Here you will find freedom from persecution, freedom to think and speak and act according to your conscience so long as you design no violence to the Government which shelters and protects you," yet any alien who had accepted that invitation to come from persecution to freedom who had been a peaceful, law-abiding resident of this country for 13 years, had married here and become father to three American children, would be forcibly ejected from the country because, without design to hurt or hinder the Government of the United States, he had been betrayed into joining an unlawful organization.

A persecuted subject of the Czar of Russia emigrated to this country that he might enjoy freedom to live and work in peace unmolested by the officials of a despotic Government. If, after 13 years of residence here, we turn him from our shores because he has been betrayed into an act he never intended to commit and which he repudiated as soon as its nature became known to him, and who, in the meantime made absolutely no contribution by thought, word, or deed to any plan for the destruction of the Government of the United States, but who, on the contrary, held that Government in high honor, we shall in turn betray our own institutions of liberty and give the lie to the history and traditions which constitute the glory of our Nation.

That we should do this is unthinkable, and yet it is precisely what we shall do if Thomas Truss is deported, for we maintain with the confidence of certainty that there can not be found in the record in this case anything which even tends to prove that Truss is anything more than the innocent victim of those responsible for the Communist Party of America, unless we regard every-one who has the point of view of the Socialist as guilty under the act.

It is needless to point out that if Congress had intended to deport every alien Socialist it would have said so.

If there is one thing that stands out above all other things in the record in this case, it is the honest mindedness of Truss. It is unfortunate in these cases

that the official charged with final responsibility as judge does not have the opportunity for observing the alien during the investigation. We think, however, that the record alone is sufficient demonstration of the fact that Truss made an honest and earnest effort to make the inspector of immigration in charge of the investigation understand his real mental attitude upon political questions. To do this was at times difficult because of the antagonistic attitude of the prosecutor judge, whose mind was apparently foreclosed against the alien before he ever saw him. We who represented him at the hearing need no evidence from the record of the foreclosed mind of the inspector, but evidence from the record is not lacking. Perhaps the worst examples are the statements found in the record, first at page 54, where Mr. Archibald used this language:

"The evidence in your case fairly shows that you were connected with the Union of Russian Workers, even though you deny that. Your name appears on the book of the secretary, the man who admitted he was secretary in his own case, and shows that dues at least were paid through March, 1919. You, of course, have denied membership in that union, but have admitted belonging to the Russian Workers' organization, which merged in a body into the Union of Russian Workers." (Underscoring is ours.)

And again on page 63, where he made the statement that he could produce five men to prove that Truss was a member of the Union of Russian Workers. He did not produce these men, and the remark gives striking illustration of the fact that Truss was convicted before the hearing commenced.

We can but condemn the whole conduct of this hearing. It is a sad and serious commentary upon American justice. The judge of the law and the facts in his rôle of prosecutor bent every energy and employed every ingenuity by heckling the accused, by intimidation, by seeking to put words in his mouth contrary to the facts, and by reading into the case assumptions of guilt not based upon proof to secure, not information but conviction.

The original arrest was without warrant, and the alien was confined in a local police station for several days until the warrant arrived. During this period there was an inquisitorial examination without benefit of counsel. The attitude of the inspector of immigration was distinctly that of a prosecuting attorney. He assumed guilt before any evidence was introduced; he was largely influenced in his views by statements made in other hearings to which Truss was no party; he is also judge and jury delegated to make the original finding of fact and apply the law thereto, and he recommends the decision of the case.

Viewed as a judicial or quasi judicial proceeding, it would be a farce if it were not so serious. Viewed as a cover for deporting an alien whom the inspector had predetermined should be deported without regard to guilt or innocence, it may be considered eminently successful.

We have affirmed, and we reaffirm, that absolutely nothing appears from the whole record of this case which could be regarded as proof that Truss occupied at most any position more dangerous to the Government of the United States than that of a nominal member for a short period of an unlawful organization, the aims and purposes of which he was unacquainted with. In order to make impossible any misconception of the state of the record in this regard, however, we desire to direct attention to certain affidavits and unsworn statements read into the record, presumably as evidence, and to the admission of which we have specifically objected. We refer to the affidavit of William M. Doyas, placed in the record as Exhibit J J, and the report alleged to be from the files of the Department of Justice and placed in the record as Exhibit L L.

These affidavits and statements all emanate from one source, namely, the Department of Justice. They are ex parte statements of men paid by the Government to secure convictions. Some are not even made under oath. The person transcribing the statement, the person who dictated it, the person who secured it, and the original source of it are in each case conspicuously absent. To attempt to use such statements in any court of law would subject the prosecutor offering them to the ridicule of opposing counsel and the just indignation of the court.

To attempt to use such worthless scraps of paper against the invited guest in the household of the nation who is entirely at the mercy of his host is unworthy of any Government official, it matters not how exalted his position or how lowly or even undesirable the alien.

We can not believe these statements will receive any other attention from the official charged with the final decision in this case than to serve as proof that the Government in this case is in possession of no facts upon which to base

the charges against Truss, and the whole proceeding against him is founded on assumptions and surmises not justified by facts. To compare them with the facts shown by the record is to expose the absurdity of the charges contained in them.

(4) Was Truss a member of the Union of Russian Workers?

In regard to this question, there is presented the only instance of any conflict of evidence. Truss denies that he ever was a member, while the membership records introduced in evidence by the Inspector tend to prove membership up to March 1, 1919.

The facts in this connection are fairly set forth in the statement of facts in this brief. From these facts it is clear that the question of membership vel non depends, first of all, upon the date of the withdrawal of Truss from the Russian Workers organization. If he withdrew prior to the merger of that organization with the Union of Russian Workers, it is clear he never was a member of the latter organization.

Assuming, however, that he is mistaken about the time of his withdrawal, and that he remained a member after the merger, it is clear from the record that he did withdraw as soon as he learned of the change. (Record, pp. 17, 18, 56-5.) There is not a scintilla of evidence that he was a member of the Union of Russian Workers after he learned of the change.

If Truss withdrew from this organization as soon as he discovered he was a member of it, everything we have said under the second heading of this argument in regard to his connection with the Communist Party of America applies with even greater force to his connection with an organization of which he did not know he was a member.

Brushing everything else aside, the charge that Truss was a member of this union is absurd on its face. A consistent churchman—an elder in his church—is charged with membership in an organization which pronounces that:

"We hate religion because it lulls the spirit with lying tales, takes away courage and faith in the power of man—faith in the triumphs of justice here on the real earth and not in a chimerical heaven. Religion covers everything with fog; real evil becomes visionary, and visionary good a reality. It has always sanctified slavery, grief, and tears. And we declare war upon all gods and upon religious fables; we are atheists."

A sober and industrious man, the father of three growing children, who has lived peaceably in his community for 13 years and broken none of its laws, is charged with membership in an organization which announces that it "hates authority." A man who believes the Government should own all the essential industries of the country and is definitely a Socialist, and as such diametrically opposed to anarchy, is charged with membership in an organization which glories in proclaiming its members "are anarchists."

It is not contended by the Government authorities that Truss was a member of this union after March 1, 1919. In this connection we desire to direct attention to the insidious attempt to make it appear that, although he withdrew from this union, his withdrawal was not because he failed to subscribe to the tenets of the organization but merely in order to organize a Polish society of the same character. We refer to the statement offered as evidence and filed as Exhibit L L.

Prior to the introduction of this statement the inspector made repeated efforts to secure evidence from the alien in substantiation of it. These efforts were futile simply because Truss was not present at the meeting, and not being present could not have made the statement attributed to him. In spite of his repeated and insistent denial that he was present at this meeting, made with every earmark of honesty and sincerity, the inspector sought by every conceivable means to induce the alien to say that he had made the statement referred to.

In answer to questions of his own counsel Truss stated that he only had not been present at the meeting referred to, but that he had never at any meeting made the statement attributed to him. We can not think it possible that any fair-minded person who was present at this hearing and heard the testimony in this connection could fail to conclude that Truss was not present at the meeting referred to and hence could not have made the statement, nor do we think that any fair-minded person acquainted with Truss's religious affiliations and convictions could believe that he had ever expressed an intention to form an organization of atheists and anarchists. Notwithstanding all this, the inspector, with what grace he could, read into the record an unsworn statement that from the records of the Department of Justice it appeared that Truss was

present at this meeting and announced his intention to withdraw from the Union of Russian Workers and to organize a Polish society with the same tenets.

We call specific attention to the fact that this statement bears every evidence of having been written with the name of the individual who was supposed to have made the statement referred to left blank. It is plainly evident that the name "Truss" has been inserted in a space larger than necessary for the name and the conclusion is irresistible that the name "Truss" was not written at the same time as the rest of the document. This leads us to wonder if this remarkable document, offered as evidence, and which would receive no consideration whatever from any court in the land, did in reality when first drawn refer to Truss at all.

(5) Has Truss otherwise violated the act of October 16, 1918?

The warrant for the arrest of the alien does not charge any other violation of the act than membership in an organization or organizations coming within the purview of the act. In other words, his personal beliefs are not attacked, and yet no sane man willingly subscribes to membership in an organization totally opposed to his own beliefs. The position of Truss on all of the questions involved, therefore, becomes an important factor in the case. Let us see what his position is as disclosed by the record.

He is a Socialist. He has a firm and strong belief in representative government. He thinks the Government should own all of the essential industries and he cites as an example of the wisdom of this theory the management of the Post Office by the Government of the United States. During the war the rate of postage increased, but immediately after the war the prewar rate was reestablished. This, he says, indicates that if the Government owned all the essential industries they would be so controlled as to put the common necessities of life within the reach of all classes of society. He regards the ballot as the proper method by which to accomplish change of governmental policy, and he is definitely and unquestionably opposed to the resort to force or violence for the accomplishment of governmental change. He came to America because of its institutions of free Government. He entertains a high respect for the Government of the United States and he desires to become a citizen of that Government. He has subscribed to Liberty loan bonds. He has contributed to the Red Cross and to regimental and other patriotic causes. (Record, pp. 36-41.)

He is a peaceable and law-abiding workman. He is a Christian and not only a consistent church member but also an elder and an active worker in the church to which he belongs (p. 59).

These are facts, and no man ever made more honest effort to exhibit his true state of mind than Truss did in this case. Is it conceivable that such a man knowingly entered into communion with persons organized for the overthrow of the Government of the United States or which entertained a belief in the overthrow of this or other forms of Government, or that he knowingly became a fellowmember of any body of atheists and anarchists?

CONCLUSION.

We respectfully submit the following conclusions:

First. That Truss is not guilty under the warrant.

Second. That Truss never became bound as a member of the Communist Party of America.

Third. Assuming for the sake of the argument that he did become bound as a member of the Communist Party of America, his membership was not of such a character as to come within the meaning and spirit of the act of October 16, 1918.

Fourth. That he never became bound as a member of the Union of Russian Workers, or if it be assumed that he did become so bound, he was never in reality a member of that organization so as to come within the meaning and spirit of the act of October 16, 1918.

Fifth. That he is a peaceable, law-abiding resident of the United States, neither entertaining nor advocating any hurt or injury of any character to the Government of the country where he resides, but, on the contrary, entertaining a high respect and regard for its institutions and in every way desirable as a citizen of it. That he is a sincere and consistent Christian and far from being opposed to all forms of government and all laws and authority, he entertains a firm belief in a strongly centralized government.

It is hard for the advocate to maintain the poise of a judge, but so far as we are able to exercise a judicial attitude in this matter we desire to register our

deep conviction that the deportation of Truss upon the record in this case would be a travesty upon justice and a stain upon the honorable intercourse of this Government with those who have sought its shores upon the assurance of safety from official persecution and injustice.

Respectfully submitted.

ALFRED S. NILES.
CARLYLE BARTON.
CHESTER F. MORROW.
GEORGE S. YOST.
EMORY H. NILES.
HENRY W. SCHULTHEIS.

Mr. Post. All right. Now, let me call your attention to the Truss case:

This man Truss's character was well attested by very highly responsible witnesses; his general character; his character as a man; as a member of the church, an elder in the church there, and an active worker. There were clergymen that appeared to testify as to his character. So that, as far as character could go, the facts were presented, and the department had something to consider, if there was any doubt.

His character, well attested by highly responsible witnesses, is that of a man who is not in the slightest degree dangerous to this Government or at all inimical to any organized government, but who would make a good citizen of the United States.

He was taken into custody on the 7th of January, 1920, by policemen who came to his home and asked him to accompany them for the purpose of answering questions. He complied, expecting to return presently. Now, that was all undisputed. The policemen conducted him to a police station, where they delivered him to the police official in charge, saying that he was wanted by a special agent of the Bureau of Investigation of the United States Department of Justice. That was not the exact language; the language was, that the sergeant, or whoever was at the desk said, "What is he here for?" And the detectives answered, "He is one of Doyas's men"; and then he was sent to a cell. Doyas was the special agent.

Thereupon the alien was locked in a cell overnight, and until some time during the next day his wife and friends were ignorant of his whereabouts. If there was any warrant for this arrest, the alien was not shown the warrant or in any other way informed of the reason or the authority for his summary imprisonment, nor has any such authority been since disclosed. While still imprisoned he was examined on the 8th of January by a special agent of the Department of Justice and his examination reduced to writing. No lawful authority for this proceeding was disclosed to the alien at the time, nor has anything been disclosed since; no warning was given him that his replies might be used against him, and he was not informed of his right to have counsel present to represent him if he wished.

Then there was an attempt to turn him over to the representative of the Department of Labor—Mr. Stump, the commissioner of immigration at Baltimore—they wished him to take the man over. Mr. Stump refused to do so. I am stating this on the authority of Mr. Stump. He said he would not be responsible for the man's custody until he got a warrant.

A special agent of the Bureau of Investigation of the Department of Justice thereupon made an affidavit in which he swore that in the

course of his personal investigations and those of the officials and employees under his supervision and direction, he was informed and verily believed that the alien was a subject of Russia; that he was a member of the Communist Party and the Union of Russian Workers; that these organizations advocate the overthrow by force or violence of the Government of the United States; and that the alien was a member of and affiliated with them; that he was an anarchist, believed in and advocated the overthrow by force or violence of the Government, disbelieved in and was opposed to all organized government. The affidavit was on information and belief; and we have accepted those affidavits from special agents of the Department of Justice as probable cause sufficient to issue a warrant of arrest upon.

This affidavit was evidently a filled-out form, as the attorneys for the alien state; but, inasmuch as the Secretary of Labor had already decided that the Union of Russian Workers and the Communist Party are within the proscription of the act of Congress of October 16, 1918, its averments imposed upon the immigrant inspector in charge at Baltimore the duty of applying to the Secretary of Labor for a warrant of arrest (see immigration rule 22, subdivision 3), and the Secretary of Labor was thereupon in duty bound to issue the warrant (see sec. 19 of the immigration act of 1917 and section 2 of the supplementary act of Oct. 16, 1918).

Accordingly, on January 8, the alien being then still in custody at the police station in Baltimore as stated above, the immigrant inspector in charge at Baltimore telegraphed to his superior officer at Washington that satisfactory probable cause had been shown against the alien for membership in the Union of Russian Workers and the Communist Party. On the following day, January 9, a warrant of arrest was consequently issued by the Secretary of Labor and the inspector in charge at Baltimore was duly instructed by telegram to arrest the alien and hold him to bail in \$1,000, the usual sum in such cases. In due course the formal warrant of arrest was transmitted to the inspector in charge at Baltimore, and on January 9, two days after the arrest described above, the alien was taken into the custody of the Department of Labor by the inspector in charge.

That was the first of his coming into the custody of this department.

Prior thereto the Department of Labor was in no wise a participant in or directly or indirectly responsible for the arrest of the alien or his treatment in any respect. Subsequently, however, to January 9, and until he gave bail on January 15, the alien remained in custody as a prisoner upon the aforesaid warrant of the Department of Labor. His hearing pursuant thereto began January 20, and on April 1 the record of hearing came to the assistant secretary for decision pursuant to his authority under the immigration laws and the organic act of the Department of Labor.

Examination of this record makes it evident that alien is not a communist. Neither is he an anarchist. He is the opposite of an anarchist, namely, a socialist. It is very clearly proven that he was a socialist.

It also appears from the record that the alien came to the United States in 1907, has lived in Baltimore ever since, and has been for several years a respected member of and active worker for the St.

Paul's Polish Church (Presbyterian) of Baltimore in which he is an elder.

As to his membership in the I. W. W., a point of contention at the alien's hearing, the record shows that he was a member of a branch of that organization six years ago, this branch being then the only union of wage workers in his shop; but that he joined the Amalgamated Clothing Workers when it was organized and thereupon dropped out of the I. W. W. He was at the head of the Amalgamated Clothing Workers when he was arrested at Baltimore.

The record also shows that alien was for a time a member of a Russian Workers organization, then an educational and mutual benefit society having nothing to do with governmental problems. This organization merged into the Union of Russian Workers (an organization heretofore proscribed under the act of October 16, 1918). We have been deporting members of the Union of Russian Workers. And the organization that he belonged to afterwards merged with that organization before it was proscribed; and immediately upon the merger, he dropped his membership. He never became a member of the Union of Russian Workers.

The case appearing in the record against the alien turns, therefore, upon the question of his alleged membership in the Communist Party of America, which, like the Union of Russian Workers is under the ban of the act of October 16, 1918. He is shown to have authorized the signing by another for him of a printed application for membership in the Communist Party. Inasmuch, however, as that signing was prior to the organization of the proscribed Communist Party of America, it is a nullity for the purpose of this proceeding unless confirmed by activities or declaration of the alien after the constitution of the proscribed Communist Party was adopted and brought to his attention.

That was an element in deciding the case. And I stand by it to-day, as I stood by it when I made it.

According to the circumstances shown alien's application was made in June, July, or August, 1919. The Communist Party of America was not organized until September. Alien had authorized his antiorganization application at the suggestion of an official organizer of the Socialist Party. He thought it was some form of socialist organization. At a mass meeting which alien attended upon the organizer's invitation, and at which the organizer set on foot preliminary proceedings for organizing a local branch of the subsequently organized Communist Party. As alien understood him the new party was to stand for socialization of mines, railroads, etc., thereby lowering prices as the Government Post Office had lowered postage.

I have no doubt that to a good many people, that sounds very "red"; but that seems to have been the thought in his mind; and it does not seem to me to make him a "red" within the act.

Such a branch was informally organized, and on September 5, the day of the organization of the Communist Party in Chicago, it applied for a charter. The application was approved by Communist Party officials at Chicago on September 14 and a membership card was given to the alien. Having previously paid a membership fee and two months' dues the alien was credited with payments up to

and including November. A charter was received by the secretary of the branch but not accepted by the group. The reason for delay seems to have been that no constitution nor any explanation of the purpose of the new party had been received, although the informally organized branch had been promised the attendance of an organizer to explain the Communist Party to its members. At a meeting in October, no organizer having come nor any constitution of the party, and the members of the branch not having learned anything more about the organization than had been explained at the mass meeting held in Baltimore before the Communist Party was organized, alien's branch decided to have no more meetings and instructed the secretary to return the charter. Its members never got together again.

That is the case as the evidence reveals it.

On the basis of those circumstances the responsibility fell upon the Department of Labor, and upon nobody else, of deciding whether or not the alien comes within the membership clause of the act of Congress of October 16, 1918.

Now, I wish to make this comment—

The CHAIRMAN (interposing). How much more of this is there?

Mr. Post. There is very little more of this. Do you mean the Truss case? I can finish the Truss case very soon, probably in 10 minutes.

Now, I go on in my decision of that case—and I reiterate it here, that [reading]:

Under that clause (the membership clause) aliens must be deported if "they are members of or affiliated with" the Communist Party of America. If this clause be construed as meaning that aliens who have once technically become members of the Communist Party must be deported even though they had no guilty knowledge, or that the principle of "once a member always a member" applies, it might be possible to spell out from the circumstances described above a membership for which deportation would be mandatory. Even then, however, there would be no little difficulty without disregarding every principle of personal responsibility. Having applied for membership before the prescribed organization was born, and withdrawn before its constitution was brought even perfunctorily to his attention, this alien would seem to a fair American mind to lack the requisites even of technical membership. If, however, the requisites of technical membership were all present, nevertheless, the Congress of the United States should not hastily be presumed to have intended that resident aliens be arrested and deported as members of an unlawful organization, when all the circumstances show the alien himself to have been innocent of any guilty knowledge or motive in taking membership and when it appears not only that he is and has been wholly free from any hostile purpose toward this Government, but that he is sympathetic with our democratic institutions.

Some members of Congress may possibly have intended when they voted for this law, to have it construed in a narrow and un-American fashion; but it would not be reasonable to infer that Congress, as the constitutional law-making body of this country, enacted this law with any such un-American purpose. I shall, therefore, assume in this case, as I have in a large number of similar cases, that Congress intended the act of October 16, 1918, to be considered reasonably with reference to the individual knowledge and intent of persons drawn innocently into an unlawful membership.

Now, I have been criticized for that thing here, Mr. Chairman, and I will just answer that criticism and then I am through with the Truss case, although there are other cases that have been spoken of that I shall want to touch upon. I have been criticized for undertaking to say what Congress meant. And now I am going to quote the Supreme Court in a case that is not a criminal case, where the

Supreme Court injected into the law a word of exemption of a certain class—into this very law, not into this identical law, but into the immigration law. I can do that better by calling to your attention something that I have written about it in another case. I have stated that in somewhat this form [reading]:

The word "members" in the statute of October 16, 1918, must be so limited in its application as not to lead to injustice, oppression, or an absurd consequence. A membership to which the alleged member has never knowingly given his assent can not be regarded as membership in any reasonable sense. The principles of the *Church of the Holy Trinity v. the United States* (143 U. S., 457) is applicable. In that case Mr. Justice Brewer, delivering the opinion of the Supreme Court, conceded that the immigrant labor contract in question was within the letter of the act of Congress, yet held that it was not proscribed by that act. "I is a familiar rule," he said, "that a thing may be within the letter of the statute and not within the statute because not within its spirit nor within the intention of its makers," and, referring to the fact that court reports are full of cases illustrating the application of that principle, he quoted with approval these words from an earlier decision:

"All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence."

Those are the words that I quoted a few moments ago. [Continuing reading:]

"It will always therefore be presumed that the legislature intended exceptions to its language, which would avoid results of this character."

In the case in which Mr. Justice Brewer delivered that opinion for the whole court, the Supreme Court decided that a contract by a church for the services of an alien minister, to be performed in this country upon his immigration into it, was not prohibited by the statute, even though that statute in terms comprehended "all kinds" of labor and "all kinds" of service other than those it specifically excepted, and notwithstanding that the exceptions did not include the contract in question. Since the Supreme Court applied this familiar principle of construction to a statute, which in the case at issue involved only a pecuniary penalty, and inasmuch as the courts will not review decisions of the Secretary of Labor except in cases in which he absolutely exceeds his jurisdiction, it would seem to be of the highest importance, in the interest of the American principles of personal liberty, that the Secretary of Labor so construe the language of the act of October 16, 1918, as to prevent the imprisonment and deportation of domiciled aliens who have not knowingly become members of an organization which the statute prescribes.

That case, Mr. Chairman, is right in point with reference to deciding according to the spirit of the law, and not absolutely and always deciding according to its exact letter—although I believe that I have stuck to the very letter of the law as well as its spirit. But I am willing to be charged with having sustained the spirit and not the letter of the law.

That was a case arising shortly after the contract-labor law was passed—the very root of all of this immigration legislation that has come on since. A penalty was imposed on any contractor in the United States who made a contract with an alien abroad to come here to do any kind of labor or any kind of service. There were a series of exceptions. The exceptions were "actors, domestic servants, professional lecturers," and some others; but not a single one of those exceptions was a minister. Consequently, just as the court said in this case, they had to inject the word "minister" into those exceptions where it was not included, in order to make the law reasonable and not to make it absurd in its administration. And so they saved the Trinity Church the pecuniary penalty that had been

imposed upon it by the lower court for violating that law by importing a minister to render services in their church; they injected the word "minister" in there and relieved Holy Trinity Church from the penalty it had incurred under the letter of the law, because, as the court properly said, it was not within the spirit of the law.

Now, that is all that I have to say of the Truss case, Mr. Chairman; but there are other matters that I wish to dwell upon.

The CHAIRMAN. It is almost 1 o'clock.

Mr. Post. I am at your service, Mr. Chairman.

The CHAIRMAN. Well, the members of the committee have duties on the floor of the House, and other duties, and I do not know that we can meet again this afternoon.

Mr. Post. I have other duties that I shall be glad to get back to.

The CHAIRMAN. Mr. Post, how much more time will you require?

Mr. Post. Well, I do not intend to review all the cases that are in here [indicating Immigration Committee report]; but I have picked out the cases that have been commented upon, regarding which the attacks have been particularly made—some four or five of them. They will not take me as long as the Truss case, because they are not as long cases. But I can not undertake to say the time I will require. I do not think it will be very long. I will get through as soon as I fairly can. I have three or four cases that have been put forward, apparently, as key cases, and speeches have been made on them both before the committee and before the House.

The CHAIRMAN. That is all the matter that you desire to include in your formal statement, is it?

Mr. Post. In my formal statement—that and one or two very brief suggestions in regard to matters that have come up.

The CHAIRMAN. Will it take you 30 minutes to present those?

Mr. Post. It will take me more than that.

The CHAIRMAN. How much time will you require?

Mr. Post. How much time can you give me this afternoon or to-morrow?

The CHAIRMAN. That is what I am trying to get at: How much time will you require to conclude your formal statement?

Mr. Post. Well, I would not like to be limited, and I would not like to say how long it will take. I should not think it will take more than an hour and a half, but I should not like to be limited as to time.

The CHAIRMAN. Well, some of the members of the committee may want to ask you some questions.

Mr. Post. I will be at their service as long as they want, after I have finished this. That is up to them. I should want, I should think, an hour or an hour and a half. I should not like to fix the time, because I can not tell what may open up; but I should think that would cover it. As I say, I have four cases, and one or two little addenda to present.

The CHAIRMAN. Then the committee will adjourn until 10 o'clock to-morrow morning, with the understanding that you are to conclude your formal statement in an hour and a half.

Mr. Post. Well, I would not like to confine myself to that. I think I can conclude in less time than that; but I would not like to have

the bell rung on me if I did not; but I will not take up any unnecessary time—I can assure the committee of that.

The CHAIRMAN. You have had two hours and a half already.

Mr. POST. Yes; but some people have had a good deal longer time than that.

Mr. RALSTON. Mr. Chairman, may I take a few moments just to lay before the committee a brief touching the powers of the Commissioner General of Immigration and the Secretary of Labor, in connection with the matters concerning which Mr. Post spoke in his opening statement? This brief reviews the law of the matter.

The CHAIRMAN. That is in addition to the statement made by Mr. Post, is it?

Mr. RALSTON. In addition to the statement made by Mr. Post.

Mr. POST. My statement was simply a very general statement, without giving you authorities.

Mr. RALSTON. We have given in this brief all the references that I think the committee will need on that point.

I also have a short brief on the question of bail and the right of the Secretary to take bonds, and the rules that should control him as to the amount of the bail taken, which I would like to submit to the committee.

And because it is not very easily available in any other printed shape, I have here the opinion of Judge Bourquin, United States district judge in Montana, in the case of John Jackson, which has been referred to by Mr. Post as bearing out certain lines of policy that he has indicated to the committee that he has taken.

I would like to submit all three of those papers to the committee at this time.

The CHAIRMAN. The committee will take notice of them.

Mr. RALSTON. I would like to have them made a part of the record.

The CHAIRMAN. The committee will take a recess until to-morrow morning at 10 o'clock.

(Thereupon, at 12.50 o'clock p. m., the committee adjourned until Saturday, May 8, 1920, at 10 o'clock a. m.)

THE POWERS OF THE COMMISSIONER GENERAL OF IMMIGRATION.

The powers of the chief officer of the Bureau of Immigration are defined in some 12 different sections of the immigration act. Even cursory examination of these sections and clauses within which are embedded variant authorities and imposed duties reveals a striking legislative caution in reposing any sort of discretion upon this officer. The tendency from the legislative beginning of 1891 has been always to narrow the extent of even executive discretion reposed until this bureau, until the act of 1917 practically places all discretion executive or judicial, upon the chief officer of the department, the Secretary of Labor, leaving only ministerial discretion for the Commissioner General of Immigration.

EXCLUSION APPEALS.

The act of 1891 (26 Stat. L., p. 1084, sec. 8) gave the Superintendent of Immigration (now the Commissioner General of Immigration) authority to decide appeals from adverse decisions by inspection officers touching the right of aliens to land, "subject to review by the Secretary of the Treasury." The act of 1893 extended the right of appeal, first given only to the alien, to include dissenting inspectors where the majority of a board of inquiry decided to admit; likewise subject to review by the Secretary of the Treasury.

In 1903 (32 Stat. L., pp. 1213-1220) Congress transferred the Immigration Bureau to the Department of Commerce and Labor, changed the title of its

chief officer to "Commissioner General," and provided that appeals from exclusion decisions should thereafter be to the Secretary through the Commissioner of Immigration and the Commissioner General. So the Commissioner of Immigration, the executive officer at the port of entrance, and the Commissioner General at the central office in Washington, became, for such appeals, simply a conduit, a forwarding agency, a filing system; and the function became purely ministerial, to transmit appeals from aliens or dissenting officials to the Secretary, and to return and execute the Secretary's decisions when made. The acts of 1907 (34 Stat. L., p. 898) and of February 5, 1917 (the general act now in force) have not altered this provision in any way; the present provision (sec. 17) providing that either the alien or any dissenting member of the board of special inquiry "may appeal through the Commissioner of Immigration at the port of arrival and the Commissioner General of Immigration to the Secretary of Labor," and that such an appeal shall operate as a stay until the receipt by the commissioner at the port of the Secretary's decision, "which shall be rendered solely upon the evidence adduced before the board of special inquiry."

Language can hardly be more precise. The commissioner at the port can not add any statement, recommendation, or primary decision upon which the Secretary can base his final decision; for the Secretary must decide "solely upon the evidence adduced"; and if the function of the commissioner at the port is thus made simply ministerial, neither can the commissioner general have any wider powers. Both officers have as to exclusion appeals exactly the same narrow function.

Had the statute remained as was provided by the act of 1891, the Secretary of Labor, as the Secretary of the Treasury was formerly empowered, could function as a reviewing officer; and properly could rely upon primary decisions of the chief officer of the bureau; the bureau chief being then responsible under his oath of office for sound decisions and just recommendations. But this primary, initiatory duty was abolished, or rather merged in the Secretary by the act of 1903 and subsequent amendments. The recommendations of the Commissioner General of Immigration in exclusion appeals are mere "scraps of paper," of no more weight than the opinions of any private citizen. If the Secretary of Labor relies upon them as official findings, he violates his own duties under the law.

EXPULSION WARRANTS.

The first reference to expulsions in immigration law appears in an appropriation act October 19, 1888 (25 Stat. L., pp. 565-566), authorizing the Secretary of the Treasury when satisfied that an immigrant has been allowed to land contrary to law, to "cause such immigrant, within the period of one year after landing and entry, to be taken into custody and returned to the country from whence he came." This provision reposes the whole duty, both primary and final, of decision, upon the Secretary. It was not essentially altered by the act of 1891 (26 Stat. L., p. 1084) or the act of 1903 (32 Stat. L., p. 1218, secs. 20, 21). The act of 1907 (34 Stat. L., p. 898, secs. 20, 21, 22), provided that aliens might under certain circumstances be taken into custody "upon the warrant of the Secretary" and deported, and that pending a final disposition of his case the alien might be released upon bail with security approved "by the Secretary." The act of 1917, February 5, in section 19, provides that aliens, under certain circumstances, "shall, upon the warrant of the Secretary of Labor, be taken into custody and deported," and nowhere in the act is there a word justifying an inference that any authority rests in any other official than the Secretary of Labor, respecting expulsion warrants. Such authority being exclusive and quasi judicial, the Commissioner General of Immigration is excluded from acting as a primary court of investigation or of recommendation upon the evidence submitted.

THE COMMISSIONER GENERAL'S NECESSARY POWERS.

But it may be suggested that such powers, even if not directly conferred, may be incidental to such powers as are plainly set forth, or necessary to the proper discharge of enumerated powers.

The only portion of the present act which by any possibility could be wrested into support of a theory that any degree of administrative authority of a quasi-judicial character is reposed in the Commissioner General of Immigration is

to be found in some phrases of section 23. This section, so far as pertinent, is as follows: "The Commissioner General of Immigration shall perform all his duties under the direction of the Secretary of Labor. Under such direction he shall have charge of the administration of all laws relating to the immigration of aliens into the United States and shall have the control, direction, and supervision of all officers, clerks, and employees appointed thereunder; he shall establish such rules and regulations, prescribe such forms of bond, reports, entries, and other papers, and shall issue from time to time such instructions not inconsistent with law as he shall deem best calculated for carrying out the provisions of 'the act' and for protecting the United States and aliens migrating thereto from fraud and loss, and shall have authority to enter into contract for the support and relief of such aliens as may fall into distress or need public aid, and to remove to their native country at any time within three years after entry at the expense of the appropriations for the enforcement of this act, such as fall into distress or need public aid from causes arising subsequent to their entry and are desirous of being removed."

This empowers the Commissioner General to control his subordinates in the bureau; to prescribe routine form; to issue instructions for executing the provisions of the law and those for protecting the Government and aliens from fraud and loss; and to make contracts for the support and relief of aliens in distress. These are purely ministerial authorities; enumerating them has the precise effect of depriving the Commissioner General of broader powers; they limit him in scope. Excepting only the one word "administration" in the opening clause giving the Commissioner General charge under the direction of the Secretary of Labor "of the administration of all laws * * * " all powers administrative in any broader than a ministerial sense are clearly reposed upon the Secretary of Labor, who is to direct the Commissioner General. In view of its immediate context, this word must be regarded, also, as conferring only ministerial powers, for the word follows the limitation "shall perform all his duties under the direction of the Secretary of Labor," and gives him charge "under such direction," not subject to approval or review. Had Congress intended to confer administrative discretion, or quasi-judicial authority for purposes of primarily deciding upon matters of exclusion or expulsion, it would hardly have placed the word "administrative" against the exponent "under the direction."

Authority in the administration of the immigration act may be classified under three headings: Primary authority, given to the commissioner general, subject to the supervision of the Secretary of Labor; ministerial authority, given the commissioner general; and final authority, including initial powers, given solely to the Secretary of Labor, excluding the commissioner general.

Clauses falling under the first heading relate to no functions of quasi-judicial nature. Such clauses appear in section 2, for issuing rules and regulations to prevent abuse of head taxes; in section 3, for temporary admission of aliens for expositions, and for admission of aliens otherwise inadmissible; section 11, for detaining aliens coming from places of epidemic, and for expediting landing of passengers; section 12, for more convenient handling of shipping lists; section 16, for hiring medical officers in emergency; section 18, for suspending deportation of aliens needed as witnesses; section 23, for detaching immigration officers, and to make requests upon the Secretary of the Treasury for medical officers for service in foreign countries; section 24, for recommending appointments and increases and reductions in compensation of employees; section 25, for sale of privileges at immigration stations; section 30, for issuing rules and regulations for admitting agents of the States, etc., to meet and solicit immigrants to migrate to special localities. Such powers are more than ministerial; but every one is placed under the limitation, "subject to the approval of the Secretary of Labor." Under these clauses, the commissioner general is apparently invested with authority to initiate, especially where the Secretary has already approved a line of policy; and the Secretary is authorized to rely upon the primary decisions and recommendations of the commissioner general.

But in the second class, the commissioner general can not initiate—must act under the direction of the Secretary of Labor. The commissioner general is purely a minister, and the Secretary's powers are initiatory. Several such clauses are found in section 23; giving the commissioner general charge of all officers, clerks, and employees; of establishing rules and regulations for carrying out the provisions of the act; for prescribing forms; for regulating the work of inspection, etc. In section 11, the commissioner general is authorized

to "receive" reports as to the condition of vessels, and, in section 17, to forward appeals from boards of special inquiry. These are but ministerial and routine services. Although the opening clause of section 23 directs that the commissioner general perform all his duties "under the direction of the Secretary of Labor," the rule of construction that the general terms of a statute are controlled by its specific terms avoids uncertainty as to those provisions of the first class in which the commissioner general is empowered specifically to initiate various minor actions. And although the word "administrative" is frequently given a wider sense, the limiting application of the phrase "under the direction" before the word "administration," in section 23, make any contention of an implication of wider power impracticable, especially when it is noticed that Congress has employed three distinct methods of appointment in enumerating the duties and powers of the commissioner general in the course of the immigration act.

In some places, as noted, the phrase is "with the approval," evidently according primary, initiatory powers to the Commissioner General; in other clauses the language excludes such primary powers by the phrase "under the direction"; and where Congress intended, it would seem, to permit executive direction in a broader sense, it employed the phrase "under the direction or with the approval." Such powers are given but thrice—to make agreements with transportation lines (sec. 2) for more convenient payment of head taxes; with medical officers hired in emergencies (sec. 16); and for sale of privileges at immigrant stations (sec. 26). In all these cases minor need for prompt attention may have actuated Congress; but the fact that it gave such powers in these instances and nowhere else indicates a studied determination against such extent of power in other directions, and the rules of construction agree with such a conclusion.

This interpretation is further confirmed by the clauses which, conferring first and final powers upon the Secretary of Labor alone, invest the Commissioner General with none, and necessarily exclude him from any activities except those which the Secretary of Labor may properly require of him in connection therewith. Such clauses appear in the following sections:

Section 3: Certain excluded aliens can not be readmitted within a year from date of deportation unless the Secretary shall consent to their reapplying. Stowaways, if otherwise admissible, may be admitted in the discretion of the Secretary. Unaccompanied children under 16 years are excluded, unless admitted by the Secretary. The Secretary must prepare slips for the literacy test; he must determine the necessity of importing skilled labor "after full hearing." Aliens returning after temporary absence are to be admitted in the discretion of the Secretary and under conditions prescribed by him. Section 7: Vessels appearing to the satisfaction of the Secretary to have imported solicited aliens are subject to fine or the denial of the privilege of landing immigrants in the discretion of the Secretary. Section 9: Wherein cases are laid down, where it appears to the satisfaction of the Secretary of Labor that aliens afflicted with idiocy, insanity, etc., at the time of embarkation are presented for admission.

Section 10 provided for a fixed penalty for transporters, where the Secretary is of opinion that prosecution is impracticable or inconvenient. Section 11a authorizes the Secretary to negotiate, through the Secretary of State, with countries whose vessels bring aliens to the United States with a view to certain employment of inspectors and matrons. Section 16 gives the Secretary of Labor discretion in the examination of aliens by not less than two medical officers at the ports under such administrative regulations as the Secretary may prescribe, and for the employment of medical officers at ports designated by the Secretary. Under section 17 the Secretary is to prescribe regulations for the presence of a friend or relative at hearings for the alien before boards of special inquiry; and when in the opinion of the Secretary a permanent board of special inquiry is unwarranted at any port, temporary details may be made from other stations or created by the immigration officers at such stations by authority of the Secretary. Section 18 authorizes the Secretary to delay immediate deportation of aliens brought to this country in violation of law if he deems it not practicable or proper. This section also provides that reembarkation within one year is forbidden unless the Secretary of Labor consent, and it forbids landing of aliens suffering from certain described diseases for medical treatment, unless the Secretary is satisfied that refusal would be inhuman or cause unusual hardship. Section 22 provides for temporary landing of relatives of a domiciled or naturalized alien who arrive afflicted with contagious dis-

ease, under regulations prescribed by the Secretary. Section 23 gives the Secretary discretion regarding transit of aliens from ports to interior stations under guard, and requires him to establish and maintain interior immigrant stations. Under section 24 the Secretary is empowered to appoint contract-labor officers without regard to civil-service laws, and makes his signature warrant to payment of accounts without itemization in certain cases. In section 32 the Secretary is authorized to prescribe regulations for control of inadmissible alien seamen, and in the succeeding section for landing such seamen for reshipping. Section — provides for mitigation of certain fines or their remission in the discretion of the Secretary. Under section 36 vessels coming to the ports of the United States are required to furnish such information as the Secretary may prescribe by regulation.

Since in all these examples the Secretary alone is given discretionary power, the functions of the commissioner general with regard to them can not be other or more than ministerial.

A fortiori, the special duties of the Secretary of Labor with respect to exclusion, under section 17 of the present act, and of expulsion, under section 19, which involve not executive, but quasi judicial discretion, and therein are peculiar and distinctive among the numerous provisions of the act, still more surely exclude the Commissioner General of Immigration from any powers respecting their administration, other than such ministerial service as is involved in the transmission of the records and return and execution of decisions.

SUMMARY.

Under the plain provisions of section 17 of the act of February 5, 1917, now in force, the function of exclusion of aliens is administered by boards of special inquiry at the ports, who examine the alien, recording all testimony offered, and if the alien appeal from an excluding decision or one of the board appeal from a majority decision of admission, the record is directed to be sent through the commissioner of immigration at the port and the commissioner general to the Secretary for his decision, which must be solely upon the evidence adduced before the board of special inquiry. The proceedings in expulsion cases are solely upon the warrant of the Secretary of Labor and appeals lie to him alone. His decision "in every case, * * * under the provisions of this act or of any law or treaty," shall "be final (sec. 19)." The remaining provisions of the act are complete in themselves, and each conveys and covers sufficient power to the commissioner general to properly discharge the duties in each section defined and limited. No implication nor any necessary duty or power requires that he be invested with the function of primarily deciding for or against admission or continued residence in the case of an alien. Since therefore neither by direct grant of such power, nor by construction of language, nor by implication nor of necessity does it appear that the power to so act rests in or pertains to the office of Commissioner General of Immigration, but is solely vested in the Secretary of Labor, it is submitted that any recommendations or memorandums of recommendation made upon the record of any examination of an alien in exclusion or expulsion proceedings by such commissioner general is without merit, force, or effect, and the Secretary of Labor can not properly consider or rely upon the same.

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MEMORANDUM OF LAW REGARDING THE APPLICATION OF THE EIGHTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

It is proposed to consider herein the application of the eighth amendment of the Constitution of the United States, which provides "Excessive bail shall not be required * * *," to the case of certain aliens held for deportation whose bail was fixed by the Assistant Secretary of Labor under the authority of section 20 of the act regulating immigration of February 5, 1917 (39 Stat., 890). Under this act the authority to fix the amount of the bond is vested exclusively in the Secretary of Labor, nevertheless it is important to consider the general

legal principles applicable, because the Assistant Secretary to whom the Secretary delegated his power is accused of having acted wrongfully in not following the suggestions of the Department of Justice as to the amount of such bonds, although it must be emphasized that the Department of Justice was entirely without legal authority in the premises to even suggest the amount. I will consider briefly, (1) the history of bail and of the provision in the Constitution regarding it; and (2) the established principles for determining reasonable bail and (3) their application to the facts under consideration, together with a brief analysis of the administrative law involved.

I. Bail both in civil and criminal proceedings is an extremely ancient custom which can easily be traced back to Norman law before the conquest. (Pollock and Maitland, *History of English Law*, vol. 2, p. 589; Esmein, *Histoire de la Procédure Criminelle*, p. 55.) The infrequent meetings of courts made the release of those accused until trial a matter of social and economic necessity. The bailors were originally personally responsible for the return of the released prisoner, and indeed so rigorous was this provision that the punishment which was to have been visited upon the prisoner could be visited upon his bailors if they failed to produce him at the time of trial. Personal responsibility was the foundation of the ancient institution of bail. A striking phrase in an ancient book speaks of the bailors as "La Vie Prison au Duc de Normandie." As a matter of practical convenience, beginning with the twelfth century, financial liability was substituted, and the forfeiture of a sum of money on the failure to produce the prisoner at the trial took the place of personal responsibility.

The power of giving bail and of fixing the amount was vested in the sheriff, and from the earliest time this power seems to have been subject to abuse. The duty of fixing the bail which should carry out the twofold purpose of the institution, namely, to release the prisoner until the trial and to insure his appearance at the time of trial, without unduly burdening him or in effect denying the right to bail altogether, was recognized as a difficult task. Bracton, in his treatise "*De Corona*," page 302, lays down the rules which are fundamental to-day. He states that the sheriff ought to exercise discretion in admitting to bail, and to consider the importance of the charge, the character of the prisoner, and the gravity of the evidence. These very principles are applied by fair-minded judges to-day. The most obvious abuse of the sheriff's power to bail, namely his ability to say, without obedience to any settled principle, whether any particular offender should be bailed or not was early remedied by the statute of bail (3 Edw. I, c. 12, A. D. 1275), a part of the statute of Westminster the First. It defined in detail what offenses were bailable and what were not. (See Stephen, *History of the Criminal Law of England*, vol. 1, p. 233.)

The sheriff's power to give bail, however, continued to be subject to great abuses. Principal among these were, first, arbitrary refusal to give bail in an offense which was bailable by law; and as a remedy the writs de homine replegiando and de manucapione were devised to release a man in such a case from the custody of the sheriff; second, holding without bail prisoners charged on insufficient grounds with offenses which by law were not bailable, especially with homicide, the purpose of the accuser being merely to spitefully cause the detention of the accused, and for this the writ de otio et atia was devised, ordering the justice to examine into the sufficiency of the evidence on which the charge was brought, and if it was not sufficient, and a charge was based on "hate and spite" (otio et atia), to release the prisoner. This latter writ is apparently referred to in article 36 of the Magna Charta. It is evident that both of these writs were the precursors of the writ of habeas corpus, and the functions of both were later merged in that writ, which has had such an important place in the history of the Anglo-Saxon struggle for personal liberty. But neither provided a remedy in the case where excessive bail was required in a bailable offense.

The constant and crying abuses under the Stuarts, the arbitrary and unlawful seizure and detention of persons on groundless charges, and the refusal to give bail when allowed by law led to the enactment in 1679 of the habeas corpus act, which writ, as has been said, had the same functions as the ancient writs above mentioned. The importance of the right to bail in the whole struggle for personal liberty in this period will be evident from an examination of the text of that act. It provided in substance for discharge, after examination, on bail, if the offense charged was a bailable one, in a sum fixed by the judge, having regard to the quality of the prisoner and the nature of his offense.

This act, and indeed the earlier writs which had aimed to remedy the abuses connected with the giving of bail, had as its outstanding defect the fact that it

did not specifically place any limitation on the authority of the judges who fixed the bail, or as to the amount of bail to be imposed. The judges, all "king's men," of that period were quick to take advantage of this defect, and the requiring of excessive bail became perhaps the most serious judicial abuse of the latter part of the reign of James II. (Taswell-Langmead, *English Constitutional History*, p. 518.) After the Revolution of 1688 the people of England resolved that such a situation should not again come to pass, and so in the preamble to the Bill of Rights of 1689 (1 William and Mary, Sess. C. 2.2) the following appears:

"Excessive bail hath been required of persons committed in criminal cases to elude the benefit of the laws made for the liberty of the subjects."

And it is enacted in the same bill that—

"Excessive bail ought not to be required nor excessive fines imposed nor cruel nor unusual punishments inflicted."

This is the provision word for word which appears as article 8 of the amendments to the Constitution of the United States.

It is evident that the right to reasonable bail is a fundamental safeguard of personal liberty, to which the meanest criminal is entitled, and that the giving of bail in a reasonable amount is a duty imposed by the fundamental principles of Anglo-Saxon law and the Constitution of the United States upon every officer charged with the arrest and commitment of accused persons.

II. The English courts seem to have never passed on the question of what is excessive bail. It appears probable that the historical background of the provision has been so clearly in the minds of the judges that a question as to its violation has never arisen.

In the United States there is also a lack of authorities. The question seems never to have been squarely presented to the United States Supreme Court, but this is to be imputed rather to the difficulty of raising the question of excessive bail than to its unimportance.

No clearer or more authoritative statement of the meaning of the eighth amendment is to be found than the following from Cooley, *Constitutional Limitations* (7th ed., p. 439):

"When bail is allowed, unreasonable bail is not to be required. * * * That bail is reasonable which, in view of the nature of the offense, the penalty which the law attaches to it, and the probabilities that guilt will be established at the trial, seems no more than sufficient to secure the party's attendance. In determining this, some regard should be had to the prisoner's pecuniary circumstances; that which is reasonable bail to a rich man being equivalent to a denial of right if exacted of a poor man charged with the like offense. When the court or magistrate requires greater security than in his judgment is needful to secure attendance, and keeps the prisoner in confinement for failure to give it, it is plain that the right to bail which the Constitution attempts so carefully to secure has been disregarded, and though the wrong is one for which, in the nature of the case, no remedy exists, the violation of constitutional privilege is aggravated instead of being diminished by that circumstance."

This remark as to the difficulty of securing a remedy for the unconstitutional fixing of excessive bail is well illustrated by the case of *Johnson v. Hoy*, U. S. Marshal (227 U. S., 245). In that case Johnson was arrested for violating the white-slave traffic act and his bail was fixed at \$30,000; he thereupon applied for a writ of habeas corpus on the ground that excessive bail was required and that the act was unconstitutional. About a week later he furnished the bond required and was released for the purpose of aiding in the conduct of his case. The Supreme Court dismissed the appeal from the order below, denying the petition for the writ on the ground that, having furnished the bail and been released, the court could do no more, and the question of excessive bail was moot. It appears from this case that only by staying in jail until an appeal can be prosecuted and heard by the United States Supreme Court can one obtain relief from excessive bail. (See also *ex parte Royall*, 117 U. S., 241.)

It is apparent that it is difficult to obtain a practical form of relief in the Federal courts once excessive bail has been fixed, which makes it all the more important that the officer fixing the bail use the utmost care. Certain States, however, provide by the code of criminal procedure for a summary appeal from the action of the committing magistrate in fixing the amount of bail, as in Texas.

The question of what is excessive bail seems to have been raised in only a single Federal case, that of *U. S. v. Brawner* (7 Fed., 86). The report is of a

hearing on an application for a warrant of removal from Tennessee to Mississippi. Among other things, the prisoner objected to the amount of his bail, which was fixed at \$5,000, the offense being counterfeiting. He alleged that he was unable to furnish that amount, but could furnish a less amount. There was evidence that the prisoner had no property except two small town lots worth about \$75, but his father, upon whom he relied for bail, owned about 240 acres of land and some farm stock, the land being worth about \$10 an acre. It was objected that the question of excessive bail could only be raised by habeas corpus, but the court held that it could consider the question. The court held further that the bail required was excessive and reduced it to \$2,500. The court said:

"In the case of *United States v. Lawrence* (4 Cranch, 518) it is said that 'to require larger bail than the prisoner could give would be to require excessive bail, and to deny bail in a case clearly bailable by law.' The discretion of the magistrate, in taking bail, is to be guided by the compound consideration of the ability of the prisoner to give bail and the atrocity of the offense. It is a rule of our courts in this district to require \$2,000 in cases like this, though it is very frequently increased under special circumstances. As this is a case for trial in another district, that circumstance should perhaps increase the amount somewhat, but I think \$2,500, under the circumstances here, as much as should be required of this prisoner, and any larger amount would be excessive. I shall, therefore, discharge him on giving bail before me in that sum."

The purpose of bail, as appears from these authorities, is, first, to secure the release of the prisoner, and, second, to insure his presence at the trial. Any bail which is more than the prisoner can possibly give is evidently excessive, and a denial of bail, since there is no possibility that he can be released. To fix such an amount where bail is allowed by law is a clear violation of the Constitution of the United States. It is generally recognized that the pecuniary circumstances of the prisoner, the nature of his offense, and the evidence against him are the controlling considerations. For instance, the Code of Criminal Procedure of Texas, article 296, fixes four rules for determining the amount of bail; the fourth rule is: "The pecuniary circumstances of the criminal are to be regarded, and testimony may be taken on this point." Examples of the importance of the pecuniary circumstances of the prisoner, of the charge, and the character of the evidence are to be found in the following cases: *Moore v. State* (36 Miss., 157); *ex parte Wilson* (20 Texas Appeals, 498), where the bail was reduced from \$7,000 to \$3,500; *ex parte Duncan* (54 Calif., 75); *ex parte State* (4 La. Ann., 696), bail of \$10,000 disproportionate to the offense reduced to \$1,000; *Sancedo v. State* (70 S. W., 546), bail on charge of assault with intent to murder fixed at \$2,000, on showing that the evidence was weak and the prisoner poor, it was reduced to \$250; *ex parte Martin* (71 Tex. Cr., 383; 159 S. W., 1182), charge of homicide, but evidence was weak and bail was reduced from \$2,000 to \$1,000.

III. The application of these principles to the case under consideration is indirect. Section 20 of the act of February 5, 1917, gives the Secretary of Labor authority to release on bond and to fix the amount. But if in addition to this bare authority it appears that the Assistant Secretary, in reducing the amount of bail suggested by the Department of Justice, was acting in accordance with constitutional principles and enforcing the Constitution, while the unauthorized suggestions of the Department of Justice and inferior immigration officials, if they had been followed, would have resulted in an unconstitutional and excessive bail, this entirely demolishes the charge of any wrongful or illegal action by the Assistant Secretary.

That such is the case clearly appears from an examination of the facts. The customary bail in deportation cases is \$500 to \$1,000, and this is an important consideration. (See *U. S. v. Brawner*, supra.) The men are usually working-men, with slight means and few friends, which is also important. (In *re Wilson*, 20 Tex. App., 498.) The offense with which they are charged is belonging to certain illegal organizations or having certain illegal beliefs, which is not a serious offense as contrasted with homicide or robbery. None of the men are charged with doing or threatening to do any specific violent overt act or were found carrying dangerous weapons or instruments. The evidence against them in almost every case consisted of affidavits of detectives or special agents made on information and belief. In view of these facts, examined in the light of the principles above referred to, it is evident that \$10,000 or \$25,000 bail was clearly excessive and an unconstitutional denial of bail. The purpose, as shown by Mr. Uhl's letter, was in fact to deny bail in violation of the statute and the Constitution. He said (p. 79):

"If, upon the other hand, you feel you are compelled to authorize the acceptance of some sort of a bond, then in no instance specify a sum less than \$25,000, or even greater. You will understand my contention is that the amount named should be so great that it will be practically impossible for anyone of this class to secure a bond." (Printed hearings, p. 79.)

It is submitted that the Assistant Secretary of Labor in reducing bail to \$1,000 was carrying out the manifest intent of the statute and acting in accordance with the Constitution of the United States.

It can not be justly said that "bail" in the Constitution refers only to criminal cases, because bail in civil cases has long been recognized. Neither is there any support in the wording of the first 10 amendments to the Constitution or in the authorities to support the view that they apply only to citizens. (Cf. *In re Ross*, U. S.)

It has been further suggested that the assistant secretary acted outside of his authority in releasing certain persons held under warrant, without bond, in the personal custody of reliable people. But this established practice of the Department of Labor is amply justified by the historical considerations already adduced (pp. 1 and 2 of this brief) which show that personal responsibility rather than financial responsibility was the original form of bail, and to-day the power to bail is recognized as carrying with it the power to release without money bail under certain circumstances. (*Commonwealth v. Philips*, 16 Mass., 423.)

The term "parole" has been used in this connection but it is legally inaccurate. A parole can be given only after conviction of a crime and is regarded either as a substitute sentence in place of confinement in prison (*State v. Peters*, 43 Ohio St., 629) or as a conditional pardon (29 Cyc., 1563). It can not be properly said that these aliens were paroled before the charge against them was finally disposed of. It may be said that they were released on bail without a bond, and this power, which is distinct from the power to parole, is part of the power of the officer charged with the custody of a prisoner to provide for his safekeeping without imposing unnecessary hardships on him and is thoroughly in accord with the spirit of Anglo-American justice.

It is submitted that there is no legal or other foundation for the charge that the Assistant Secretary of Labor acted wrongfully in reducing bail or releasing without a bond in these cases.

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FRANK F. NESBIT,
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C. T. CLAYTON,
Of Counsel.

HABEAS CORPUS—DEPORTATION—SEARCHES AND SEIZURES—DUE PROCESS OF LAW—FAIR HEARING—CRITICISM OF THE OPPRESSIVE PRACTICES OF PRIVATEERING SPECIAL INTERESTS AND PATRIOTEERING PUBLIC OFFICERS.

MATTER OF JOHN JACKSON, DECIDED BY JUDGE BOURQUIN IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA FEBRUARY 12, 1920.

The following is the complete text of Judge Bourquin's decision:

Petitioner, held for deportation as an alien, "found advocating or teaching the unlawful destruction of property," and who at time of entry "was a person likely to become a public charge," seeks habeas corpus for that the evidence against him was unlawfully secured, that the deportation proceedings were unfair, and that the evidence fails to support the findings quoted above. Respondent returns the record of said proceedings.

Therefrom it appears that from August, 1918, to February, 1919, the Butte Union of the Industrial Workers of the World was dissatisfied with working places, conditions, and wages in the mining industry, and to remedy them were discussing ways and means, including strike if necessary. In consequence its hall and orderly meetings were several times raided by employers' agents, Federal agents, and soldiers duly officered, acting by Federal authority and without warrant. The members, men and women, many of whom a familiar principle concludes are citizens of the United States, made no resistance save

oral protests, no retaliation, and there was no disorder save by the raiders. These armed forcibly entered, broke, and destroyed property; searched effects and papers; seized papers and documents; cursed, insulted, beat, dispersed, and bayonneted members by order of the captain commanding; likewise entered petitioner's adjacent living apartments, insulted his wife, searched and seized his papers, several times arrested him and others, and in general in an orderly and populous city perpetrated an orgy of terror, violence, and crime against citizens and aliens in public assemblage, whose only offense seems to have been peaceable insistence upon an exercise of a clear legal right. After several days' confinement subsequent to the raid and arrest in February, 1919 (three months after practical end of the war), and denial of counsel to petitioner, he was taken before an inspector, intimidated by a policeman and a soldier, and those four alone present he was interrogated. He objected generally, but finally answered and also in respect to pamphlets so seized as aforesaid introduced in evidence against him. These pamphlets and papers so seized from the hall and the petitioner's apartment are the only material and vital evidence against him so far as the first finding quoted is concerned. There were later appearances before the inspector where at petitioner had counsel. At these statements were introduced as evidence which had been made without petitioner's presence. In so far as vital, they are by raiders who identify the pamphlets and papers seized and state somewhat in respect to petitioner's conduct of one of the union's meetings. Some of those raiders were produced for petitioner's cross-examination, but one of them who testified to all last aforesaid, soldier Ambord, was not produced. Petitioner's counsel demanded it, and the inspector promised to produce Ambord only if counsel would state in writing what he expected to prove and would deposit costs of productions, which counsel refused to do. Objections made in petitioner's behalf were excluded from the record. Objections so made are now forgotten. The above, in so far as relates to objections, appears ex necessitate only by oral evidence in this habeas corpus proceeding.

The record further discloses that petitioner is an able-bodied man and was with his wife when he entered in 1915, and since has supported his family, including a child here born, by ordinary mining and other labor. Since 1917 he is a member of the labor organization aforementioned, and for the latter half of 1918 was assistant secretary of the Butte union. He disclaims advocacy or teaching or believing in the unlawful destruction of property, admits having seen some of the same pamphlets in the hall and for sale, states that he sold some, and so far as read by him he does not remember contents and can not say he indorses them. These pamphlets are assumed to advocate and teach unlawful destruction of property, and because thereof and of inferences from the petitioner's status and conduct he is found to have advocated and taught such destruction. Without the pamphlets and brought home to petitioner (sic.), there is no evidence of any such advocacy or teaching. Permitting all discussion of the contents of these pamphlets, and having in mind the political control over aliens, the summary character of the proceedings in deportation and the limited jurisdiction of the courts in respect thereof, it is believed the deportation proceedings aforesaid were unfair in that they violated the searches and seizures and due process clauses of the Constitution, to the protection of which as a resident alien petitioner is entitled. It is true there is intimation by the supreme court that these provisions are not applicable to aliens (see *Fong v. U. S.*, 149 U. S., 730), but it is only dictum. To say you shall not be exposed to unreasonable searches and seizures without warrant and deprived of the due process Congress prescribed in deportation, because you are an alien, is to say you are an alien because so found upon evidence secured by unreasonable searches and seizures and in proceedings without the due process Congress has prescribed—a vicious circle and a grave danger to all, citizens as well as aliens. It invokes the age-old method of tyranny to convict by unlawful means because you are guilty, and to condemn as guilty because you are convicted by unlawful means. It is impossible that by the dictum aforesaid the supreme court intends to will or sanction so dangerous and tyrannical a construction of the Constitution, virtually legalizing outrageous, cruel, and horrifying raiding, robbing, and lynching like that at bar, in which both citizen and alien are sacrificed.

The Declaration of Independence, the writings of the fathers of our country, the Revolution, the Constitution, and the Union, all were inspired to over-

throw the like governmental tyranny. They are yet living, vital, potential forces to safeguard all domiciled in the country, alien as well as citizen.

If evidence of the alien's evil advocacy and teaching is so wanting that it exists in only that herein and as secured herein, he is a far less danger to this country than are the parties who in violation of law and order, of humanity and justice, have brought him to deportation. They are the spirit of intolerance incarnate, and the most alarming manifestation in America to-day.

Thoughtful men who love this country and its institutions see more danger in them and in their practices and the government by hysteria they stimulate than in the miserable, battled "reds" that are the ostensible occasion of them all. The people may confidently assume that even as the "reds," they, too, in due time will pass and the Nation still live. It is for the courts to deal with both, to hold both in check when brought within the jurisdiction. Respondent contends the service rules require the alien's objection to be omitted from the record and require counsel to advance them in brief. If at all times the alien and counsel, if he were familiar with law and rules (No. 22, par. b) that authorize examination of him without knowledge of what he is accused and without counsel until facts are sufficiently developed "to protect the Government's interests," if objections could be remembered the procedure might serve as fair. But whether fair or not in ordinary cases, in one wherein the alien's rights have been infringed to the extent here, the court will take note whether the objections were made with technical provision or not, and hold the proceedings unfair. So, too, were the proceedings unfair for failure to produce Ambord for cross-examination. The rules (No. 24) require that he should have been produced. The condition the inspector sought to impose applies to witnesses for the alien and not at all to witnesses for the Government and their cross-examination. Ambord was a vitally material witness. He identified pamphlets as those seized in the hall, one essential link in the chain of circumstances. Although there was another witness to the same item, none the less was the alien entitled to the benefit of the rule and to cross-examine the witness, Ambord; and the error preventing this is fatal to fairness. He was denied the due process of the rule authorized by the Congress. It can not be said that in any event the decision would have been the same unless it be that in any event petitioner was to be deported. Unfortunately there is indication of that. It is seen in the findings that he "was a person likely to become a public charge" when he entered. This is gratuitous and evidently injected to deport petitioner if the other finding was not sustained anywhere. There is not a scintilla of evidence to support it. Indeed, the inspector who declared it immediately complains that petitioner "was working and earning a good salary, but never purchased any war-savings stamps or Liberty bonds." In this and other war references may be found some anxiety to dispose of petitioner.

The premises render unnecessary inquiry whether the evidence is sufficient to support the first finding quoted.

The writ is granted.

February 12, 1920.

BOUQUIN, J.

COMMITTEE ON RULES,
HOUSE OF REPRESENTATIVES,
Saturday, May 8, 1920.

The committee met at 10 o'clock a. m., Hon. Philip P. Campbell (chairman) presiding.

THE CHAIRMAN. You may proceed, Mr. Post; but, before proceeding, I want to call your attention to the statement you made yesterday with respect to newspaper correspondents drawing two salaries. That statement of yours has attracted a great deal of attention in the country, especially among the newspapers. The newspaper publishers are very much interested and are very anxious, if you have any data on that subject, to have you make it known and to give the basis of that statement.

STATEMENT OF HON. LOUIS F. POST—Continued.

Mr. Post. Mr. Chairman, I think you misapprehended my statement yesterday, if I may judge from your remarks just made and from reports in the papers which indicate that I have stated that reporters were getting two salaries and representing other interests than their papers. Now, I had no such intention. No one has more respect for the hard-working reporter and the conscientious reporter than I have, and the great body of reporters and correspondents are conscientious and hard-working men. But publicity bureaus have grown up. I have been told—and I think it probably could be shown—that even before the war as many as 1,200 professional publicity men were selling their services to private interests for the purpose of utilizing newspaper publicity, and I understand the number has very much increased since. Now, I have no personal knowledge of any of these matters, but there are, as I am informed by newspaper men and others, connected with the newspaper publishing business of the country men who are known commonly as two-salary men.

The CHAIRMAN. Give an illustration of that.

Mr. Post. The illustration I will give you can be found in the records of Congress, as I am informed.

The CHAIRMAN. I never heard of a two-salary reporter before, and I have been here for 18 years.

Mr. Post. Very well. A man of the name of Logan, who was a newspaper correspondent, ostensibly getting news for his papers as a newspaper man and as a correspondent in Washington, was discovered, as I remember the circumstances and as I now understand them, to be employed by the packing-house interests to serve them, and from them he received the other salary, which was very much larger than any of the income he got from his legitimate employment as a newspaper reporter and correspondent. Now, if the committee wishes to have those facts, I will endeavor to have them gotten from the records of Congress and elsewhere and lay them before the committee—such as I can get. But I am not testifying as a witness to this.

The CHAIRMAN. I think it only fair to the newspaper men and the newspaper publishers that the exact facts be known.

Mr. Post. So do I.

The CHAIRMAN. It is unfair to all these newspaper boys, that we all know are working here for their papers. And I have every reason to know, because on a committee that investigated the matter some years ago the same charge was made and it was finally disclosed that one or two newspaper men on one or two occasions did get a tip or a present of a very small amount, of all the hundreds of newspaper men here in Washington.

Mr. Post. Something like \$30,000 a year is my recollection this man got. Now, Mr. Chairman, permit me for a moment—I can not allow the imputation to stand upon this record apparently as my statement; I am making no imputation upon newspaper men earning their living honestly at newspaper work. My imputation is against the men who have worked their way into that business, and, under the guise of newspaper men, are really serving financial interests

that are detrimental to the real interests of the country. Now, if this committee wishes to investigate that matter, if it is within its province to investigate it, I shall be very glad to take charge of trying to find out the facts if I can; but I conceive, sir, if that is important to the newspaper interests in the country, they ought to take steps to have an investigating committee take up the matter and inquire into it, so that it will be authoritative when the matter is achieved.

The CHAIRMAN. The whole thing rests upon the statement you made yesterday.

Mr. Post. I beg your pardon, Mr. Chairman, it rests upon well-known facts and upon investigations that have been made by Congress.

Mr. Pou. Now, Mr. Post, do you know anything except what was developed in what was called the leak investigation?

Mr. Post. I do not know even that. What I know is what I have heard newspaper men say and what I have heard other men say who know about these matters. What I have said is entirely from hearsay, and I supposed that everybody who knew the conditions at Washington with reference to publicity bureaus knew those facts. Now, that can be developed and the truth can be brought out, but I object to undertaking the function of bringing it out before this committee, where it may be reported or may not be reported after the investigation is made. You have no authority, as I understand, to go into that investigation. If you have I am perfectly willing to come before you and present the facts.

The CHAIRMAN. This committee has as much authority to make an inquiry of you upon the statement of facts you made yesterday as you have to make the statement before the committee. I will say this: That I have this telegram from a reputable publisher:

Touching Post statement that reporters draw money from outside sources, can you put Post on the stand on this and find out all he knows on the subject? Such statements calculated to undermine public confidence. Why does he say this and what evidence has he got to back it up?

Mr. Post. I, in the first place, did not say that. I did not charge the reporters with this; I charged parasites who have got into the reporting profession in one way and another with doing it. And if you want to know, Mr. Chairman, have an investigation to which you summon the honest newspaper men, and you will get your leads without any difficulty whatever from the same sources that I do.

Now, may I ask what newspaper that is, Mr. Chairman? I will be very glad to take the matter up with them.

The CHAIRMAN. It is a reputable newspaper.

Mr. Post. May I not know the name of the paper?

The CHAIRMAN. I will show you the telegram.

Mr. Post. You will show me the telegram?

The CHAIRMAN. Yes.

Mr. Post. All right. Now, Mr. Chairman, yesterday I told the committee that to avoid any further misunderstanding as to the Secretary's rulings I would put in his opinion in the two cases, the Preis case, which was the Communist Party case, and the Miller case, which is the Communist Labor Party case, and I am very glad to do that for the additional reason that has come to my attention since yesterday, which is to the effect that among the newspapers there is being

persistently circulated a statement, so the newspaper men tell me from the various papers, a statement appearing in New York, to the effect that the Secretary's ruling, through some typographical error and through a confusion of the two cases, had resulted in his deciding that both these parties are within the proscription of the law. I offer, as you told me yesterday you wished me to do, a mimeographed copy of the Secretary's decision of January 23—I think that is the date; it was released for the papers on January 25, but is otherwise undated, but it was rendered either on the 23d, the 22d, or the 24th. That is in the Preis case, and holds that the Communist Party is within the proscription of the law of 1916, and, pursuant to which, I have ordered deportations in all the cases in which I sat and did order deportations.

The Secretary's decision in the Carl Miller case is dated May 5, 1920, several months after the other, and the circumstances are these: When the Secretary had decided the Communist Party cases, it was stated to him he had thereby in effect decided that the Communist Labor Party also was within the proscription. He looked at some of the documents and at the law and said that he believed that applications for membership under the organic laws of the two parties were essentially different, and that he would hear argument in the other case. His having to leave the city and his being ill prevented his taking it up. Meanwhile I admitted the members—I allowed them to go on their own recognizance until he could decide. He did have this full hearing, and decided according to the mimeograph copy, which I will now turn over to the reporter, thereby putting the two fundamental decisions under which I have acted, before the committee.

(The decisions of the Secretary of Labor referred to are as follows:)

DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, January 23, 1920.

Opinion of Secretary Willson with regard to membership in Communist Party. In re Englebrert Preis.

Age 31; native of Austria; entered the United States at Port Huron, Mich., on November 13, 1915, having arrived in Quebec by steamship *Scotan* June 14, 1914. This is a case arising under the provisions of the act of October 16, 1918.

It is alleged that the alien is a member of the Communist Party of America, which is affiliated with the Communist International. The alien admits membership in the Communist Party of America, and that it is affiliated with the Communist International. The sole question, therefore, to be determined by the Secretary of Labor is: Is the Communist Party of America such an organization as is described in the act of October 16, 1918, membership in which makes an alien liable to deportation? The language of the act applicable to this particular case is as follows:

"SECTION 1. * * * aliens who are members of or affiliated with any organization that entertains a belief in, teaches, or advocates the overthrow by force or violence of the Government of the United States. * * *

"SEC. 2. * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported in the manner provided in the immigration act of February fifth, nineteen hundred and seventeen."

It will be observed that belief in, teaching, or advocating the overthrow of the Government of the United States is not alone sufficient to bring any organization within the scope of the act. There must in addition be a belief in, teaching, or advocacy of force or violence to accomplish the purpose. Bearing that in mind we may proceed to an examination of the facts.

The manifesto and program and constitution of the Communist Party of America and the manifesto of the Communist International are submitted in

evidence and their authenticity admitted. The constitution of the Communist Party (see p. 19 of the manifesto) requires that—

"Sec. 2. Applicants for membership shall sign an application card reading as follows: 'The undersigned, after having read the constitution and program of the Communist Party, declares his adherence to the principles and tactics of the party and the Communist International; agrees to submit to the discipline of the party as stated in its constitution and pledges himself to engage actively in its work.'"

An examination of the documents submitted clearly demonstrates the fact that it is the purpose of the Communist Party to overthrow the Government of the United States. There are many statements that might be quoted showing that purpose. The two following are typical. On page 9 of the manifesto and program the statement is made:

"Communism does not propose to 'capture' the bourgeois parliamentary state, but to conquer and destroy it."

And again on the same page:

"The proletarian class struggle is essentially a political struggle. * * * The objective is the conquest by the proletariat of the power of the state."

Many other statements of similar purport are to be found in the same document. After having found that it is the purpose of the Communist Party to conquer and destroy the Government of the United States the next point of inquiry is as to how the conquest is to take place.

It is apparent that the Communist Party does not seek to attain its objective through the parliamentary machinery of this Government established by and operated under the Constitution. That is made sufficiently clear by the following excerpt from page 15 of the manifesto referred to:

"(b) Participation in parliamentary campaigns, which in the general struggle of the proletariat is of secondary importance, is for the purpose of revolutionary propaganda only."

And again from pages 9 and 10 of the same document:

"In those countries where the conditions for a workers' revolution are not yet ripe, the same process will go on. The use of parliamentarism, however, is only of secondary importance."

And further on page 10:

"The parliamentarism of the Communist Party performs a service in mobilizing the proletariat against capitalism, emphasizing the political character of the class struggle."

The parliamentary processes established by our Government are to be discarded or used for propaganda purposes only and other means adopted for overthrowing the Government of the United States. These means are stated at considerable length and frequently reiterated, seemingly for purposes of emphasis. The conquest of the power of the State is to be accomplished by the mass power of the proletariat.

Strikes are to be broadened and deepened, making them general and militant, and efforts made to develop their revolutionary implications. The strike is to be used not simply as a means to secure redress of economic wrongs, but as a means through which the Government may be conquered and destroyed. A few excerpts from the Communist Party and Communist International manifestos will make these statements evident.

Thus, on page 10 of the manifesto and program of the Communist Party of America, is the following:

"The conquest of the power of the State is accomplished by the mass power of the proletariat. Political mass strikes are a vital factor in developing this mass power, preparing the working class for the conquest of capitalism. The power of the proletariat lies fundamentally in its control of the industrial process. The mobilizing of this control against capitalism means the initial form of the revolutionary mass action that will conquer the power of the State."

And again, on page 11, of the same document:

"Mass action is industrial in its origin, but it acquires political character as it develops fuller forms. Mass action, in the form of general political strikes and demonstrations, unites the energy and forces of the proletariat, brings proletarian mass pressure upon the bourgeois state. The more general and conscious mass action becomes, the more it antagonizes the bourgeois state, the more it becomes political mass action. Mass action is responsive to life itself, the form

of aggressive proletarian struggle under imperialism. Out of this struggle develops revolutionary mass action, the means for the proletarian conquest of power."

And further on page 12, the same document:

"Strikes of protest develop into general political strikes and then into revolutionary mass action for the conquest of the power of the State. Mass action becomes political in purpose while extra parliamentary in form; it is equally a process of revolution and the revolution itself in operation."

Then on page 16:

"The Communist Party shall participate in mass strikes, not only to achieve the immediate purposes of the strike, but to develop the revolutionary implications of the mass strike."

And then making the purpose still more clear, we have the following from page 30 of the manifesto of the Communist International, with which the Communist Party of America is affiliated and whose manifesto is accepted as part of the policy of the party:

"The revolutionary era compels the proletariat to make use of the means of battle which will concentrate its entire energies, namely, mass action, with its logical resultant, direct conflict with the governmental machinery in open combat. All other methods, such as revolutionary use of bourgeois parliamentarism, will be of only secondary significance."

From these quotations and numerous other statements in the manifesto, not here quoted, it is apparent that the Communist Party of America is not merely a political party seeking the control of affairs of State, but a revolutionary party seeking to conquer and destroy the State in open combat. And the only conclusion is that the Communist Party of America is an organization that believes in, teaches, and advocates the overthrow by force or violence of the Government of the United States.

It does not devolve upon the Secretary of Labor officially to determine whether Congress was wise in creating the law, or the Communist Party wise in creating the facts. It is his duty to apply the law to the facts as he finds them. It is mandatory upon him to take into custody aliens who are members of this organization and deport them in the manner provided for in the immigration act of February 5, 1917.

Your memorandum of January 17, 1920, recommending that the department issue its warrant for the deportation of Englebrert Preis, such deportation to be to Austria, at Government expense, is hereby approved.

W. B. WILSON, *Secretary.*

DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, May 5, 1920.

Memorandum for the Commissioner General of Immigration (through the Assistant Secretary).

In re Carl Miller.

Age 38; native and citizen of Germany; arrived at the port of Galveston, Tex., in October, 1907.

This is a case arising under the provisions of the act of October 16, 1918. It is alleged that the alien is a member of the Communist Labor Party of America, and that the Communist Labor Party of America is one mere membership in which makes an alien liable to deportation under the act of October 16, 1918. Alien admits his membership in the Communist Labor Party; that he pays his dues in advance; and that he is familiar with the manifesto and program of the party. The question to be determined by the Secretary of Labor is, therefore: Does the Communist Labor Party come within the purview of the act of October 16, 1918, making aliens who are members of it liable to deportation?

The language of the act applicable to this case is as follows:

"SECTION 1. * * * aliens who are members of or affiliated with any organization that entertains a belief in, teaches, or advocates the overthrow by force or violence of the Government of the United States * * *.

"Sec. 2. * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported in the manner provided in the immigration act of February fifth, nineteen hundred and seventeen."

In a letter to the Secretary of Labor dated January 14, 1920, Mr. Swinburne Hale, counsel for the Communist Party and later for the Communist Labor

Party, said relative to making arrangements for hearing in the Communist Party case:

"I have no doubt that if this procedure is satisfactory I can arrange to have similar officials of the Communist Labor Party produced for examination at the same time. You may not, however, feel that this is necessary, since the language of the Communist Labor platform is substantially the same, and the number of its members arrested is smaller."

Nevertheless an examination and comparison of the Communist Party platform and program with that of the Communist Labor Party platform and program discloses some very substantial differences. The Communist Party requires its applicants for membership to sign a card reading as follows:

"The undersigned, after having read the constitution and program of the Communist Party, declares his adherence to the principles and tactics of the party and the Communist International; agrees to submit to the discipline of the party as stated in its constitution, and pledges himself to engage actively in its work."

It will be observed that the application for membership requires the applicant to assert that he has read the constitution and program of the Communist Party, and that he adheres to the principles and tactics of the party and the Communist International.

The Communist Labor Party application for membership is decidedly different. It reads as follows:

"I, the undersigned, recognizing the class struggle between the capitalist class and the working class and the necessity of the working class organizing itself politically and industrially for the purpose of establishing communist socialism, hereby apply for membership in the Communist Labor Party. I have no relations as member or supporter with any other political party. I am opposed to all political organizations that support the present capitalist profit system, and I am opposed to any form of trading or fusing with any such organizations. In all my actions while a member of the Communist Labor Party I agree to be guided by the constitution and platform of that party."

There is in this application and pledge no intimation that the member is required to accept the tactics of the Communist International or the tactics of the Communist Labor Party, except in so far as they are expressed in the constitution and platform of that party. Yet it is not the principles advocated, but the tactics proposed to be pursued to secure their adoption, which create the deplorable condition.

In order that we may clearly understand the duty devolving upon the Department of Labor, it should be pointed out that the recognition of the class struggle between the capitalist class and the working class, the advocacy of the political and industrial organization of the working class to establish communist socialism, the declaration that he has no relations as member or supporter with any other political party, or the declaration that he is opposed to political organizations that support the present capitalist profit system, and to any form of trading or fusing with any such organization, does not make an alien deportable under the law.

The Communist Party asserts that "communism does not propose to capture the bourgeois parliamentary state, but to conquer and destroy it," thereby making clear its intent to use force to attain the end in view. No matter how much mass action or economic power in the form of strikes may be used as a means of propaganda, it would be impossible to conquer and destroy our present form of Government without the use of force, unless it is first captured by the parliamentary methods provided by our constitution and laws.

The Communist Labor Party makes no such definition. On the contrary in Part I, section 2, of the "Party and labor program," it declares: "The working class must organize and train itself for the capture of state power."

The Communist Party declares that "participation in parliamentary campaigns * * * is for the purpose of revolutionary propaganda only." The Communist Labor Party makes no declaration to that effect.

Because of these differences, the conclusion was reached that the organizations would be passed upon separately and each dealt with in accordance with its own merits.

The principal excerpts from the Communist Labor Party platform and program relied upon to show that the organization is one mere membership in which makes an alien liable to deportation under the act of October 16, 1918, are as follows:

"PLATFORM.

"1. The Communist Labor Party of the United States of America declares itself in full harmony with the revolutionary working class parties of all countries and stands by the principles stated by the Third International formed at Moscow.

"PARTY AND LABOR PROGRAM.

"PART I.

"The Communist Labor Party of America declares itself in complete accordance with the principles of communism, as laid down in the manifesto of the Third International formed at Moscow.

"2. The working class must organize and train itself for the capture of state power. This capture means the establishment of the new working-class government machinery in place of the state machinery of the capitalists.

"6. The most important means of capturing state power for the workers is the action of the masses, proceeding from the place where the workers are gathered together—in the shops and factories. The use of the political machinery of the capitalist state for this purpose is only secondary.

"7. In those countries in which there is a possibility for the workers to use this machinery in the class struggle they have in the past made effective use of it as a means of propaganda and of defense. In all countries where the conditions for a working-class revolution are not ripe, the same process must go on.

"PART II.

"6. Not one of the great teachers of scientific socialism has ever said that it is possible to achieve the social revolution by the ballot.

"7. However, we do not ignore the value of voting or of electing candidates to public office—so long as these are of assistance to the workers in their economic struggle. Political campaigns and the election of public officials provide opportunities for showing up capitalist democracy, educating the workers to a realization of their class position, and of demonstrating the necessity for the overthrow of the capitalist system. But it must be clearly emphasized that the chance of winning even advanced reforms of the present capitalist system at the polls is extremely remote; and even if it were possible, these reforms would not weaken the capitalist system.

"PART III.

"1. In America, the capitalist class has never had a feudal aristocracy to combat, but has always been free to concentrate its power against the working class. This has resulted in the development of the American capitalist class wholly out of proportion to the corresponding development in other countries. By their absolute control of the agencies of publicity and education, the capitalists have gained a control over the political machinery which is impossible to break by resorting to this machinery.

"5. It is our duty as communists to help this process, to hasten it, by supporting all efforts of the workers to create a centralized revolutionary industrial organization. It is our duty as communists, who understand the class struggle, to point out to the workers that upon the workers alone depends their own emancipation, and that it is impossible to accomplish this through capitalist political machinery, but only by the exercise of their united economic power.

"PROGRAM.

"1. We favor international alliance of the Communist Labor Party only with the communist groups of other countries, those which have affiliated with the Communist International.

"2. We are opposed to association with other groups not committed to the revolutionary class struggle.

"3. The party shall make the great industrial battles its major campaigns to show the value of the strike as a political weapon."

In addition to these should be noted the argument by counsel that the tactics of the Communist Party in Russia are the methods intended to be pur-

sued by the Communist Labor Party of America, and that certain statements of prominent communists relative to the objects of the Communist Labor Party should be taken as showing the intent of the party itself. The tactics of the Communist Party in Russia can have no bearing upon the Communist Labor Party in the United States, except in so far as those tactics are accepted or adopted by the Communist Labor Party; nor can the statements made by prominent members of the party be accepted as the expressions of the organization unless the party by its own action adopts the statements.

The excerpts from the Communist Labor Party platform and program quoted above indicate an extremely radical objective, but there is nothing in them that discloses an intention to use force or violence or that is incompatible with the use of parliamentary machinery to attain the radical end it has in view. The belief in, teaching, and advocacy of the class struggle, mass action, the conquest of political power, the dictatorship of the proletariat, socialism, communism, the one big union, shop committees, shop stewards, and other social, industrial, economic, and political changes mentioned in the Communist Labor Party platform and program, however reprehensible these things may be to the minds of any or all of our people, do not bring the organization within the purview of the act, as long as it does not propose to use force or violence to accomplish the purpose. If the American people are left free to discuss and decide the questions presenting themselves for consideration from day to day, uninfluenced by the threat of force or violence, they can be relied upon to protect themselves against any false philosophies, wild-eyed revolutions, or dictatorships of any kind.

The Communist Labor Party of America does not come within the scope of the act of October 16, 1918.

There being no evidence, other than membership in this party, to show that Carl Miller comes within any of the deportation provisions of the law, the warrant under which he is held is hereby canceled.

W. B. WILSON, *Secretary*.

Mr. Post (continuing). Now, let me emphasize again, Mr. Chairman, because I find it is very difficult to make an exact statement that can be exactly understood, that the real issue in all these cases is not whether the Secretary of Labor should deport men who come within the proscription of the act of 1918, but whether he should deport men who do not come within that proscription; in other words, it is his function, and his function alone, to pass judgment upon each individual case and to determine whether it does come within that proscription. And that is what I, as alter ego of the Secretary, have done in all these cases in which I have either deported or canceled. And no one else has any lawful authority to advise or decide on that question. I wish to emphasize this because it is the law.

The CHAIRMAN. Now, Mr. Post, I think we may as well discuss that matter a moment.

Mr. Post. I am very glad to do so, sir.

The CHAIRMAN. It is your contention that the Commissioner General of Immigration has no authority in these matters?

Mr. Post. No more than you have, sir.

The CHAIRMAN. Does the language in the act creating the Department of Labor and giving authority, or such authority as is given, to the Commissioner of Immigration, differ in any respect from the language in the statute creating the Commissioner of Pensions, or the Commissioner of the General Land Office, or the Commissioner of Indian Affairs? All of these three commissioners that I have last named are under the Department of the Interior. The Secretary of the Interior "shall" do so-and-so with respect to pensions, with respect to Indian affairs, and with respect to public lands; but the Commissioner of the Land Office, the Commissioner of Pensions, and

the Commissioner of Indian Affairs are created in that department to do this work. Is not the same thing done in the Department of Labor with respect to immigration and naturalization?

Mr. POST. If you are correctly describing the others, the same thing was not done in the Department of Labor with reference to warrant cases and exclusion appeals. Those two classes of cases stand by themselves. The commissioner general's functions with respect to them are purely ministerial, subject to the orders of the Secretary. He is simply the Secretary's sheriff in that connection. There is a brief before you—

The CHAIRMAN. Is that by construction on your part, or is that the language of the statute?

Mr. POST. It is plainly there in the statute. The brief that has been submitted to you tells the whole story.

The CHAIRMAN. What I am interested in, and I am sure the committee is, is in the plain language of the statute; not an inference.

Mr. POST. Very well; let me give you the plain language of the statute. I read it to you yesterday, Mr. Chairman. The plain language of the statute gives certain functions to the Commissioner General of Immigration with the approval of the Secretary.

The CHAIRMAN. That same language is used with respect to pensions, the land office, and Indian affairs.

Mr. POST. Mr. Chairman, if you wish to have a comparison made between the land office and the others, I will refer that to my counsel. I am telling you what our statute provides and I am perfectly willing to tell you, and I will tell it to you fully if you desire.

The CHAIRMAN. I simply lay it before you because the practice in this department is to do the work through its subordinates or creations in the department.

Mr. RALSTON. If you will pardon me, Mr. Chairman, I think the chairman is in error, certainly so far as the practice in the Interior Department is concerned. There is a sort of practice of review there.

The CHAIRMAN. Oh, there is an appeal from each of these commissioners to the Secretary.

Mr. RALSTON. Not even an appeal, I think, in certainly very many cases in the land office; but the Secretary of the Interior can be applied to review what would otherwise be the official action of the Commissioner of the General Land Office. And I think each department must depend upon the language particularly relating to it and that language we have here.

Mr. POST. I had not intended to make a discussion of that; I merely wished to emphasize my position regarding it. But if you care to hear further on it, I will add more to what I said. I will repeat what I said yesterday regarding the peculiar history of the immigration act—

The CHAIRMAN. That is not necessary to repeat that in the record.

Mr. POST. Very well. The brief is here, presented by the counsel, which is in line with the decision which had been made, and any lawyer who will read that brief I submit will find it utterly impossible to come to any conclusion other than the conclusion I have stated.

Mr. POW. With respect to a controversy as to the jurisdiction, as there appears to be in this case, is it or is it not the custom to ask the Attorney General for an opinion?

Mr. Post. Why the Attorney General? There is no reason why we should ask the Attorney General for an opinion on that point. We ask our solicitor for opinions on internal questions when we want them.

Mr. Post. Have you asked his opinion?

Mr. Post. I have not asked his opinion; no, sir. It was not necessary I should ask it. But the fact of the matter is, for a long time, in general, with all cases, and with particular cases, the same practice is followed as I have followed in this case. Now, Mr. Chairman, I spoke of that not for the purpose of getting into any controversy—that is all before you in the brief—but for the purpose of calling attention to the fact that the Commissioner General of Immigration is not the dictator to the Secretary of Labor in warrant cases. It has been assumed by the committee that makes this complaint that he is the dictator in effect, and that the Assistant Secretary was culpable for overruling him. Now, the Assistant Secretary used his memorandum but the Assistant Secretary's function was to decide the case. The Commissioner General had no power to decide the case. And the reason I bring this in is because the Committee on Immigration has presented a report in which they contrast the Commissioner General's memorandum and recommendations with the Secretary's decision, as if the Secretary's overruling the Commissioner General was culpable. And my position is that the Secretary had no business to be governed by the Commissioner General in these cases at all.

Now, I want to emphasize the main thing, namely, that in this report, as it has been submitted here by the Committee on Immigration, they have case after case contrasting the Commissioner General's opinion with the Secretary's decision, and leave out the evidence on which the Secretary himself decided and on which the Commissioner General should decide, if he had any authority. That is the only point I am trying to make about it.

The CHAIRMAN. Now, if the commissioner general has been used in connection with these matters, putting in his own time and the time of a large force in his office—what force has he in his office?

Mr. Post. I do not know what force he has in his office; it is varied.

The CHAIRMAN. He has a large force in his office?

Mr. Post. More or less; yes.

The CHAIRMAN. And they have been used in connection with these matters. Now, is it your contention that all that work, labor, and expense connected with that in the commissioner's office has been for naught; that it was unauthorized?

Mr. Post. Yes.

The CHAIRMAN. And unlawful?

Mr. Post. I do not say unlawful; nonlawful.

The CHAIRMAN. Nonlawful?

Mr. Post. Yes.

The CHAIRMAN. Well, then, should not the office be abolished?

Mr. Post. Well, it has other functions, Mr. Chairman. A sheriff has a good many functions, although he has no judicial functions.

The CHAIRMAN. But most of the time has been put in on this?

Mr. Post. Oh, no. If there had been, Mr. Chairman, there would have been no cluttering up of all these files, keeping men in jail

until the commissioner general could go through the nonlawful form of making a recommendation to the Secretary. The whole office was not devoted to that. Piles upon piles of records of cases were cluttered up in that office because the commissioner general thought it was his function to decide the case before the Secretary should decide it. I have had that changed lately, else these men would have been left in jail—not only anarchists, as you call them, Communist Party people, and other people left in jail for weeks and months, but other aliens, too.

Now I will go on with what I was going to say. I asked yesterday to put in the evidence in the Truss case, and that is here, but I will have to ask the indulgence of the committee until I can get it copied, and I will give it as soon as possible to the stenographer to put in. That, I understand from your ruling, should go in. I also asked to put in the brief from the Niles firm that represented Truss. That you took under advisement.

The CHAIRMAN. We have not yet come to a conclusion on that.

Mr. Post. Then there is no conclusion on that?

The CHAIRMAN. Not as to the brief.

Mr. Post. Then if the clerk of the committee will inform me when that conclusion is arrived at, if the conclusion is favorable, I will have a copy sent to the stenographer. If it is unfavorable, of course, nothing need to be said about that.

The CHAIRMAN. Generally we regard it as filling up the record.

Mr. Post. Now, then, understanding—I will state it again—that the function of the department was to find the question of guilt or innocence, and that is what it has tried to do in every case. I will take up the matter of this Truss case a little further. I tried to get it here yesterday, as I told you, Mr. Chairman, but I was unable to do it. I found out afterwards the Committee on Immigration and Naturalization, or its subcommittee, had it, and I received it last night when I got back to the office, and so I have it here now. I find when it comes back it appears to have been in the custody of the sergeant-at-arms of the Committee on Immigration, who had given his receipt to the commissioner general for it, and I find some other matter in it that perhaps I ought to call to the attention of the committee. It is somewhat disarranged, not in the same order in which it was. I find added to this file in the Truss case two documents that I have never seen before, one from the commissioner at Baltimore, made after the decision in the case and dated April 13. The commissioner says:

“* * * Referring to the Thomas Truss case, now much discussed in the newspapers:

I have to advise that under date of April 7 Assistant Secretary Post sent me a copy of his memorandum to you in the matter. Other than this I have had no official notification from the bureau directing cancellation.

That was about a week after the order for cancellation had been made * * * “directing cancellation of the warrant and release of the bondsmen and have not, therefore, communicated with the alien’s attorneys. In looking over my copy of the Truss case, I find a report made by acting special agent in charge, bureau investigation, Department of Justice, William M. Doyas, which was not sent over to the bureau with the record, as we thought this case against this alien

had been sufficiently proven. Now, the Secretary in his sixth principle says: 'Automatic membership does not constitute membership within the act of October 16, 1918, unless supported by proof of individual activities or declarations tending to show knowledge of the character of the organization.'" Then Mr. Stump goes on to say: " * * * and it is hoped this report of the special agent"—and I ask your particular attention to that—" * * * and it is hoped this report of this special agent, which evidences Truss's activity to raise funds to defend aliens, some of whom have already been ordered deported, shortly after he himself had been released from jail, might possibly convince the Assistant Secretary of Truss's individual activities in defense of his organization. Signed Bertram Stump, commissioner."

Now, Mr. Doyas's statement—the special agent—upon which it is expected I would reverse that decision is as follows, dated January 26:

DEAR SIR: I am reliably informed by undercover man, and for your information and guidance I beg to advise that a meeting was held by the Polish Branch Local 100 of the Amalgamated Clothing Workers of America—

that is a legitimate trade-union—

at the Polish Home, Friday night, January 23, South Broadway near Eastern Avenue, and that Thomas Truss, who was released by you upon giving a satisfactory bond, is president of this branch and presided at this meeting.

Something he probably had a right to do.

Mr. Truss stated he could not speak what he desired concerning the men who were recently arrested and held by the immigration authorities. He urged the Branch Local 100, of which he was the president, to appropriate \$500 for the defense of these men—

Observe, for the defense of men charged with being anarchists or members of the Communist Party; not for preventing deportation of members of the Communist Party, but for the defense of men charged with that offense, members of his association—the legitimate trade-union of the Amalgamated Clothing Workers—

for the defense of these men, in order to prevent deportation. This was agreed upon and \$500 given for this purpose by the aforesaid local branch. It was further announced at this meeting that the headquarters of the Amalgamated Clothing Workers of America, at Front and Baltimore Streets, issued instructions that each branch of said organization located in Baltimore contribute \$500 for the defense of these men, and this is being carried out.

There are about 7,000 members of the Amalgamated Clothing Workers of America in Baltimore.

Respectfully,

WILLIAM M. DOYAS,
Acting Special Agent, in Charge.

Now, if that had been real evidence of any culpable act, it is utterly unsworn to; there is no opportunity for the alien to cross-examine the witness under oath; simply the certificate of a detective that this man has done something. I conceive that would not be evidence to justify a change in the ruling of the Secretary, even if it stated facts that indicated culpability; but it does not state such facts. I submit to you, Mr. Chairman, that any people in this country have a right to raise funds to defend any man who is charged with an offense, no matter how venomous the offense may be. The question is whether he shall be convicted of an offense of which he is not guilty.

The CHAIRMAN. This was an offense that would lead to deportation?

Mr. POST. Deportation, imprisonment, or any other deprivation of his rights.

The CHAIRMAN. As I understand that, that was to prevent deportation?

Mr. POST. To raise money to prevent their deportation if they were innocent; to see that they were properly defended. I think, Mr. Chairman, some people are losing sight of the difference (and I have reiterated it) between the obligation to deport men who are culpable under the act of 1918 and men who are not proved to be culpable under the act of 1918. The man who was not culpable, surely we have no right to deport; and it is unfair to the department, unfair to the country, to assume everybody whom a detective charges with culpability shall, therefore, be deported, and whoever stands in the way, no matter how wisely he may do it, and no matter with what judgment or fairness he may do it, shall be denounced as a defender of Reds.

That is all I care to say about the Truss case, and I shall speak of only some four or five other cases in this record that has been presented by the Immigration Committee for your consideration.

I shall speak of the cases—I have selected them, and I have selected them with reference to the comments that have been made on the floor of the House and in this committee and in another committee and through the newspapers over the country. They have been emphasized, and therefore I have selected them. If the committee wishes to hear from me regarding any of the other of the mass of cases, I am perfectly willing to respond to questions the committee may ask when we come to the question period and to take up any one of the questions they should like me to take up. Meanwhile, I shall only consider the cases the decisions in which have been criticized.

One of these is the Wirth case. The name is sometimes spelled W-o-r-t-h and sometimes spelled W-i-r-t-h. The story of that case appears on pages 33 to 36, both inclusive, of the report of hearings before the subcommittee of the Committee on Immigration and Naturalization, which has been put before your committee as evidence in support of the impeachment charges made against the Assistant Secretary of Labor. That is one of the cases in which, after an introduction by the sergeant at arms of the subcommittee, there is inserted a memorandum, a letter, addressed to the Commissioner General of Immigration, signed "J. E. Hoover, special assistant to the Attorney General." That letter was dated March 16. There is another of March 16, addressed to the Commissioner General of Immigration, signed by J. E. Hoover, special assistant to the Attorney General. There is a report on page 34, that appears to be dated March 15, signed "Vera C. Brungard," marked "Approved, March 15, 1920, J. E. Hoover, special assistant to the Attorney General." There is a memorandum dated March 13, signed by the Commissioner General of Immigration, recommending that the department issue its warrant for the deportation of Wirth. On that memorandum is the one word "cancel," signed by myself as Assistant Secretary. There is a memorandum of some one signing "C"—the Commissioner General, I suppose—added to that, reading "Alien

at large on bail." On slip of paper, pinned to above, "Law Div. If release has not gone out it should not be delayed. March 23-20. C." That is everything that is put into that case.

The evidence of the case has not been put in; and therefore, Mr. Chairman, I now ask the privilege, in defense of the department and in defense of myself under these charges as Assistant Secretary, to insert the evidence in the Wirth case, so that this committee may have some means of judging as to whether Wirth ought to have been deported or whether he ought to have been released on the evidence I had when I passed judgment on the case. There is nothing in the exhibit to show what I had before me except the assumption that when the commissioner general makes a memorandum and signs it I must approve it, and, if I do not, I am guilty of something or other that is worthy of impeachment. Now, I am willing to say I can understand that there could be two judgments fairly, either one of them fair, in the Wirth case, considering the very narrow character of this act of March, 1918. I could not charge a man that found that Wirth ought to be deported with violating his duty; neither could I say a man who found he ought not to be deported, that he was not within the law under the circumstances. It is precisely the kind of cases that come before juries constantly, where juries disagree. Whether I am one of the 11 obstinate men or whether I am the one man who decides in the right, regarding what we are familiar with in regard to jury trials, I do not undertake to say. I do mean to say that that decision was honestly made on the evidence, and not on the matters extraneous to the evidence and which the committee that makes the report to you has withheld from you. I now offer it into the record.

The CHAIRMAN. The evidence may be placed in the record.

Mr. POST. I will furnish copies as quickly as I can have them made.

The CHAIRMAN. Oh; you have not the evidence with you?

Mr. ALBERT JOHNSON. Mr. Chairman, just a minute. If Mr. Assistant Secretary Post is going to volunteer evidence in the Wirth case and certain others—the Committee on Immigration has copies of the evidence in the Truss case. The Committee on Immigration wants the evidence in a large number of cases, which I will read, and it will save a good deal of labor on the part of the committee of the House endeavoring to copy those.

Mr. POST. I object to these being offered now.

The CHAIRMAN. That may be done at some other time.

Mr. POST. Now, as to any other cases in which they want the evidence, they can have the evidence. They have been afforded full opportunity to get all that that they have asked us to see, all the files in the department, and have been given a room, and their sergeant at arms has been there; but they have been told they must not take cases out of the building without the authority of the Secretary of Labor.

The CHAIRMAN. They have not been given authority to take them out?

Mr. POST. They have not, except in individual cases.

The CHAIRMAN. Now, it has been stated in that connection, since that matter is up, that the attorneys for the alien have invariably had access to those papers and have been able to take them out of the office.

Mr. Post. He has not been able to take them out of the building, and the committee has been given full opportunity to use them in the building, but has been told, and told in writing, that whenever they want to take a file out of the building, if they will apply to the department they will be given the courtesy. You may remember that it was published pretty broadcast here that that committee made a raid on the department (of course, I am not holding that committee responsible for this publication), that they made a raid on the department and had taken files out, which, of course, they have no authority to do. But they have not been interfered with in the slightest. But instead of applying, as courtesy would have demanded, to the department for files, they have taken out, they have gone to the commissioner general and taken files out without the authority of the department. The commissioner general had no more right than messenger boys have to let files go out. Nevertheless that committee would never have been denied in a single instance if they had applied to the department, but they have got the files without applying to the department. I am making no complaint.

The CHAIRMAN. They got them through the courtesy of the Commissioner of Immigration?

Mr. Post. The commissioner is the mere custodian; they are not his files, and he has no authority whatever to allow a file to go out of the building. And, Mr. Chairman, no one knows better than you do how it would be to allow them to go out to anybody, and they have not been allowed to go out to anybody except by the commissioner general, and he has allowed them to go without the knowledge of the department to the sergeant at arms of that committee.

Mr. TINCHER. I presented the Wirth case the day I made my statement, and I said I had read the Wirth case in the testimony, and the decision I made was based on what I read and the ruling of the assistant secretary.

Mr. Post. Are you a member of this committee?

Mr. TINCHER. No; I am a Member of Congress.

Mr. Post. My complaint is that the Rules Committee which has this matter under investigation has not been furnished with the essential evidence. If the Rules Committee think, upon reading the evidence, I was wrong, why it is up to them to say so; I have no objection. But my point is that the withholding of evidence and putting in extraneous matter which has no legal value whatever was not only unfair to me but unfair to the committee which is charged with the responsibility for this investigation. Now, I put in the evidence and leave it to the committee; I am not going to discuss the Wirth case at all beyond saying, in my judgment, it is a case on which any jury might well have disagreed.

U. S. DEPARTMENT OF LABOR IMMIGRATION SERVICE—REPORT OF HEARING.

Chicago file No. 2050/312.

Accorded alien Louis Worth under department warrant of arrest No. 54850/525 dated January 8, 1920, at U. S. Immigration Office, on the 4th day of February, 1920, by W. W. Roat, Chicago, Illinois, U. S. Immigrant inspector. Minutes of hearing taken by Jas. O. Peyronnin, transcribed by Jas. O. Peyronnin, said alien being able to speak and understand the English language satisfactorily, an interpreter was not employed, competent in the language, the language spoken and understood by the alien was employed (being first duly sworn, if not official interpreter of the U. S. Immigration Service).

Allen duly sworn:

The examining inspector then made the following statement to the alien:

"I show you, and ask you to read, a warrant issued by the Hon. Secretary (or Acting Secretary) of Labor of the United States for your arrest, to afford you an opportunity to show cause why you should not be deported from the United States for the reasons set forth in the warrant, and any other reasons which may appear as your hearing proceeds."

The warrant was then offered to the alien for his (or her) inspection.

Q. (by examining inspector). Have you read the warrant and do you fully understand the nature of this proceeding?

Q. You are advised that you have the right to be represented by counsel at this hearing. Do you wish to be so represented?—A. Yes.

Q. (if foregoing question is answered in the affirmative). Who is your attorney?

A. Benj. Bacrach, 1320 West Minster Building, Chicago.

Q. (to attorney). Do you represent this alien, and are you ready to proceed with this hearing at this time?

A. Yes.

Q. (if this alien does not wish to be represented by counsel). Do you waive all right to counsel, and are you ready to proceed with the hearing at this time?

Q. Do you waive the reading of the warrant to the alien?—A. I do.

By attorney.

The alien was duly sworn and gave the following testimony:

Q. What is your full, true, and correct name?—A. Louis Worth.

Q. By what other names have you been known?—A. None.

Q. What is your complete address?—A. 6153 University Avenue.

Q. What is your occupation?—A. I am a social worker.

Q. Can you read and write?—A. Yes.

Q. Are you married or single?—A. Single.

Q. (If married) what is the name and address of your husband (or wife)?

Q. Are you dependent upon your husband (or wife) for support?

Q. Are they dependent upon you for support?

Q. If you are deported what provision will be made for other member of family?

Q. What baggage and valuables have you, and where are they?—A. I have clothing and other effects at the above-mentioned address.

Q. When and where were you born (municipality, county, or province, country)?—A. August 28, 1897, in Genuenden, District of Coblenz, Germany.

Q. Of what country are you a citizen at the moment of this hearing?—A. Germany.

Q. On what do you base your claim to such citizenship?—A. Birth.

Q. Have you been naturalized as a citizen of the United States? If so, when and where?—A. No.

Q. Where was your father born?—A. Germany.

Q. Has he been naturalized as a citizen of the United States? If so, when and where?

Q. Where was your husband born?

Q. Where was your husband's father born?

Q. Has your father or mother ever been in the United States?—A. No.

Q. Have either of them been naturalized as citizen of the United States? If so, when and where?

Q. When did you last enter the United States and where? Give full details of time, place, and manner of entry. (Compare alien with verification of landing.—A. In December, I think the 26th, 1911, entered port of New York, steamship *President Grant*, Hamburg American Line.

Q. If you entered from Canada, following arrival from country other than the United States, give time and place of landing in Canada; name of steamer; were you (or your father or your husband) naturalized as citizen of Canada, and if so give name of court, date, and place; give name and address of place where you worked and lived in Canada, and name and addresses of people who can satisfy Canadian immigration officials that you resided in Canada from date of landing there to date of departure. (Get full information.)

Did you ever live in the United States prior to your last entry? If so, when and where?—A. No, sir.

Q. Have you a passport? (Attach copy to record or quote in full in record.)—A. I was a minor when I entered the country; my uncle has all my papers.

Q. Give names and addresses of relatives abroad to whom you wish to go if deported.—A. Father, Joseph Worth, same place of my birth.

Description: Age, 22; height, 5 feet 5½ inches; weight, 121; forehead, high; eyes, brown; mouth, regular; Chin, full and round; hair, light brown; complexion, fair; face, full and round; nose, long; marks.

By Inspector to alien:

Q. What date were you arrested?—A. On the night of January 2, 1920.

Q. Where were you arrested?—A. In my room 6153 University Avenue.

Q. I will ask if you were examined by Special Agent Bocock at the Federal Building on January 6, 1920?—A. I was examined by this gentleman (indicating Mr. Bocock).

Inspector to the attorney for the alien:

Q. I show you a transcript of the examination by Mr. Bocock of the alien on January 6, 1920, and ask if you waive identification of the same?—A. I waive identification.

Inspector to the alien:

Q. I will ask are you or have you ever been a member of the Communist Party of America?—A. One time I thought I was, I do not know whether I am, or not.

Q. When you were examined on the 6th of January, were you asked this question: "How long have you been a member of the Communist Party" and did you answer, "About two months"?—A. Yes; I answered that.

Q. Were you asked this question, "To what branch do you belong?" and did you answer, "To the Central branch, 1221 Blue Island Avenue, which is just in an embryonic or formative state, being formed for the students"?—A. I just remember the first part, the first part I remember something similar to that.

Q. Who was the secretary of that branch and did you answer, "My roommate, Joseph Shaefer, was temporary secretary at one of the meetings of this branch"?—A. He acted as temporary secretary.

Q. What date did you join the Communist Party?—A. I do not remember any definite dates.

Q. About what date?—A. I can not say that because it was not a question of joining but simply getting my consent of joining.

Q. Did you sign an application and now the date?—A. No.

Q. How many meetings did you attend of the Communist Party of America?—A. I think I was at two meetings, one or two.

Q. What dates were you at these meetings?—A. I can not remember, approximately one in September and one in October.

Q. How much dues and initiation fees have you paid in the Communist Party of America?—A. Around 50 cents.

Q. Was it 50 cents initiation fees?—A. I do not remember exactly what the fee was.

Q. What dues did you pay?—A. Something like 30 or 35 cents.

Q. A month?—A. I think so.

Q. Were you given a membership card?—A. Never had one because my roommate was the secretary.

Q. What was the name of the local branch to which you belonged?—A. I think it was called the central branch.

Q. Where did they hold their meetings?—A. At 1221 Blue Island Avenue. When I was there.

By Inspector:

I offer as Exhibits A, B, C, and introduce in evidence the Manifesto and Program of the Communist Party of America, Manifesto of the Communist International, and the call for a national convention for the purpose of organizing the Communist Party of America.

I call attention to the counsel to the fact that these are photostat copies and ask whether he waives objection to the absence of the original to said photostat copies?

By Attorney:

A. Yes.

By Inspector to alien:

Q. Have you ever read the Manifesto and Program and Constitution of the Communist Party of America?—A. Yes.

Q. Have you ever read the Manifesto of the Communist International?—
A. Yes, sir.

Q. Did you ever read the call for a national convention for the purpose of organizing the Communist Party of America?—A. I don't think I have.

Q. It was in the Communist paper for the 19th of July, 1919?—A. That was before the party was organized; I may have read it; I am not certain.

Q. Do you believe in the principles as outlined in the Manifesto and Program of the Communist Party of America, and Communist International?—
A. I can not say I do believe in them.

Q. Do you recall having read the manifesto of the Communist International?—A. Yes, sir.

Q. What is it in those manifestos that you do not believe in?—A. I have to read it pretty carefully to say the things that I do not believe in. I can then more easily tell what I do believe in.

Q. All right; tell us what you believe in?—A. (By alien: On page 12, chapter two, last paragraph of the book Communist International, which I think I pointed out to Mr. Bocock when he examined me in the Federal Building—as follows: "In those countries in which the historical development has furnished the opportunity, the working class has utilized the régime of political democracy for its organization against Capitalism. In all countries where the conditions for a workers' revolution are not yet ripe, the same process will go on.")

Q. Is that all you do not believe in?—A. I believe that.

Q. Don't you believe in all of the stuff?—A. I can not say without going through the book carefully.

Q. Do you believe in this? From Communist International, page 16—"The Communist Parties, far from conjuring up civil artificially, rather strive to shorten its duration as much as possible, in case it has become an iron necessity—to minimize the number of its victims, and above all to secure victory for the proletariat. This makes necessary the disarming of the bourgeoisie at the proper time, the arming of the laborers, and the formation of a Communist Army as the protector of the rule of the proletariat, and the inviolability of the social structure." "Such is the Red Army of Soviet Russia which arose to protect the achievements of the working class against every assault from within or without. The Soviet Army is inseparable from the Soviet State."—
A. I do not believe that all means should be used to gain the victory of the workers. I believe that all lawful means should be used to gain victory for the working classes. To maintain that victory by means of force or violence I would seriously object to that.

Q. Of the manifesto and program of the Communist Party of America, do you believe in the principles as outlined in that manifesto?—A. No, sir.

Q. How does it happen you belong to the Communist Party of America and do not believe in it?—A. I believe, as I told you, I was a student of social and political science, and I was writing my master thesis in the department of sociology and in some phases of the communist movement, and I felt, therefore, it was necessary to come in direct contact with the movement. I had carried a good deal of literature on the subject I was studying and I felt as a young man I was not doing anything wrong in belonging to such a movement. I thought it was a perfectly legitimate movement. I thought it was lawful. I had no idea it could be considered wrong to belong to the Communist Party of America. No one told me about that.

Q. Schafer is secretary of the Communist Party?—A. He acted as temporary secretary at one of the meetings of the Communist Party; of the local to which I was supposed to belong; we talked the matter over, and after explaining to me certain phases about the thing I told him I was willing to join, and later on, after he had paid my dues, I asked him how much it was; I do not remember exactly the amount; and I reimbursed him for the amount paid; that was the situation.

Q. Were you an active member of the branch?—A. I do not quite understand.

Q. Did you participate in the meetings?—A. I have never been on that platform for the Communist Party or any local; I have not written anything for the party, except attended those two or three meetings, whichever they were.

Q. Did you express any of your opinions at your meetings of this branch?—
A. I voiced some opposition to certain things in the manifesto and program; certain phrases which I pointed out to Mr. Bocock the day we had our conversation.

Q. Do you belong to the Socialist Party?—A. No.

Q. Did you ever belong to it?—A. I belonged to a local of the Socialist Party.

Q. What local?—A. Of the University of Chicago.

Q. How long did you belong to this local?—A. About one and a half months; I can not remember exactly.

Q. Do you believe in organized governments?—A. Yes, sir.

Q. Do you believe in the Soviet Government of Russia?—A. No, sir.

Q. In answer to that question in your previous examination by Mr. Bocock you stated, I believe in every country having the form of Government it desires?—A. I stated each country should have the right to change any kind of Government they want.

Q. As I recall from your examination you stated something for the betterment for the working classes?—A. I do not believe in strikes. I believe Mr. Bocock at that time thought I did not believe in strikes, because as a general policy strikes would lead to a national chaos and starvation.

Q. Do you believe in sabotage?—A. No, sir.

Witness duly sworn.

By inspector:

Q. What is your name?—A. Branch Bocock.

Q. Your official position?—A. Special agent, Bureau of Investigation, Department of Justice.

Q. Do you recall the examination of Mr. Louis Worth on the 6th of January, 1920?—A. About that time; I am not certain of the date.

Q. Is this transcript part of the official records?—A. Yes, sir.

Q. Of the Bureau of Investigation?—A. Yes, sir.

To the attorney by inspector:

Q. You may question the witness.

Attorney for the alien to Mr. Bocock:

Q. You have had quite a lengthy conversation with Mr. Worth?—A. Yes, sir.

Q. Did you get the impression that he was truthful all the time in his talk to you?—A. Far as I saw, he was.

Q. Do you know what his activities are, what he was engaged in at the time of his arrest?—A. Not to my own knowledge.

Q. Do you know that he is concerned in the, for the betterment of the prisoners, etc.; that he is connected in some capacity in the boys' court, etc.?—A. I recall now that some statement was made that he was engaged in some welfare work, something of the kind; I do not remember exactly.

Q. Did he explain in full to you his connection with the Communist Party, the manner in which he joined it, if he did join it, at the time as he told it to the inspector?—A. Not to that length. I may state that our discussion was based principally on the aspects of sociology and economic features, the whys and wherefore for the movement of this kind, and more particularly certain statements in the manifesto of the Third International; we discussed those things.

Q. At that time did he tell you he was not opposed to the Government of the United States?—A. I think he did.

Q. Did he also at that time tell you that he did not favor the overthrow of the United States Government by force or violence in any way?—A. I was under the impression that he was not opposed.

Q. In other words, from anything he said so far is there anything to lead you to believe or suppose what he said to you is not a fact?—A. Why, you are asking me to participate in some judiciary findings.

Q. I am not Mr. Bocock.—A. Let me understand you correctly.

Q. I want to ask this question, Mr. Bocock: Suppose some person finds he is in trouble and has had an opportunity to get wise as to the situation, and then he develops some sort of an idea that will not queer him, I ask if there is anything explained to the inspector here to-day that is not substantially embodied in your talk that day with Mr. Worth?—A. In substance. I'd like to qualify to this extent, to be fair, and that is my recollection is at the time Mr. Worth did not explain as extensively as he has now; that he went primarily into this party which he admitted to be a member of, solely for the purpose of informing himself for the proposed thesis which he was going to write. He did mention he was interested in the movement from a standpoint of sociology.

Attorney to the alien:

Q. Mr. Worth, as I understand your explanation to the inspector, you roomed with a university student, who was temporarily secretary of a branch of the

Communist Party. He talked to you several times about joining the party; is that correct?—A. That is correct.

Q. And then you finally told him you were willing to join?—A. Yes, sir.

Q. At that time there were no card or application blanks submitted to you?—A. No.

Q. And you never signed anything?—A. I think I gave him my name and address.

Q. So you did not sign anything in the nature of an application for the Communist Party?—A. No.

Q. But at that time you expressed a willingness to join you had not in mind of definitely connecting with the party, as joining the party?—A. I did not know exactly as to whether I would become a member.

Q. When did you next hear anything of it?—A. He told me he paid my dues, referring to Shafer.

Q. And thereupon you reimbursed him for his outlay?—A. I did.

Q. And after that you attended two meetings?—A. I do not remember the number exactly—either one or two.

Q. Did you read the manifesto of the Communist Party before you expressed your willingness to join or afterwards?—A. I think I read it before.

Q. Did you understand that the Communist Party manifesto, as you read it, advocated the overthrow of the United States Government by force or violence?—A. I understood it to mean, as opposed to the overthrow of the Government of the United States by methods of force or violence.

Q. You do not approve of force or violence?—A. I do not.

Q. Did you graduate from the university?—A. Yes, sir.

Q. When?—A. In June, 1919.

Q. Did you get a degree?—A. Yes, sir.

Q. Since leaving the university what have you been doing?—A. I am still a member of the university. I have always been taking courses at the university. I was a seminar under Prof. Small in studies of Carl Marx.

Q. You still take some work of the university?—A. Yes; I am working for a higher degree.

Q. Besides that what are you doing?—A. As boys' welfare work of the bureau of personal service.

Q. And what are your duties there?—A. My duties are to supervise boy delinquents, and to give boys necessary assistance in court and institutions and to assist the court, in the boys' court, to make investigations in the home conditions of boys, and so on.

Q. How long have you been engaged in that sort of work?—A. Engaged with the bureau of personal service since June, 1919, but before this I was doing work of a similar nature. I worked with the American Red Cross between December, 1918, and June, 1919, taking care of cripple soldiers and sailors, and other work of disabled soldiers, and then I was working for the Chicago Daily News in the market-analysis department as field investigator.

Q. To what did that work have relation to?—A. Relation to investigating into economic and social conditions, particularly to living conditions, to house budgets, to buying and selling household goods.

By inspector to the alien:

Q. I show you a charter of the Communist Party of America and ask you if this is the charter of the branch to which you belong?—A. I do not remember of ever having seen this before. It might be because it has central branch on it, but I do not remember of ever having seen it.

Q. Do you know whether Mr. Shafer had that charter?—A. I have never seen it.

Q. You say this is the charter of the branch to which you belong?—A. I do not know; it may be the charter, but I don't know. I did not know a charter had been issued, because I think our branch was not completely organized.

Q. Referring to the manifesto of the Communist Party, I will read from page 15, paragraph B:

"Participation in parliamentary campaigns which in the general struggle of the proletariat is of secondary importance, is for the purpose of revolutionary propaganda only."

Paragraph C:

"Parliamentary representatives of the Communist Party shall not introduce or support reform measures. Parliaments and political democracy shall be utilized to assist in organizing the working class against capitalism and the State. Parliamentary representatives shall consistently expose the oppressive

class character of the capitalist State, using the legislative forum to interpret and emphasize the class struggle; they shall make clear how parliamentarism and parliamentary democracy deceive the workers; and they shall analyze capitalist legislative proposals and reform palliatives as evasions of the issue and as of no fundamental significance to the working class."

I will ask you if you believe in the use of lawful means to remedy the conditions of the working class, and how do you propose to accomplish lawfully a remedy of such conditions through the Communist Party when the Communist Party, as per paragraphs B and C, on page 15, expressly repudiates and disavows all intention of using the only lawful means available to accomplish its purpose, to wit, parliamentary action?—A. I am absolutely opposed to the two paragraphs B and C read, which does not believe in parliamentary action as a means of gaining the end of the working class. I believe that parliamentary action should be made use of to the full extent possible to better the conditions of the people.

Q. I will ask you if you ever expressed any views of that kind in public, if so, when and where and under what conditions?—A. I have never been on the platform, but I have expressed myself that the people should make use of all lawful means at their disposal, including, of course, parliamentary action—I have spoken of this to others at the meeting which I attended and outside of the meeting.

Q. The day at the post office when question by Mr. Bocock did you express those views?—A. I think I did.

Q. Do you recall having been examined by Special Agent O'Grady, of the Department of Justice, the night of your arrest?—A. I remember being examined by the man who made the arrest.

By Inspector: Statement of this examination by Special Agent O'Grady offered in evidence and marked Exhibit E.

Inspector to the attorney for the alien:

Q. Do you waive the identification of the exhibit?—A. I do.

Inspector to the alien:

Q. Did you tell Mr. O'Grady that you belonged to the Communist Party for two months?—A. I think I told him that I belonged to it about one or two months.

Q. You told him that you belonged to the Central Branch, which meets at 1221 Blue Island Avenue?—A. Yes, sir.

Q. Did he ask you if you had any card or membership credentials, and you said you don't know?—A. I think I said that.

Q. Were you given any documents of any kind in connection with the Communist Party to show that you had filed—to show that you had a membership card and paid in dues?—A. No; I don't think.

Q. Were you given any receipts for dues paid?—A. My roommate paid the dues and I reimbursed him.

Witness duly sworn.

By Inspector:

Q. What is your name?—A. Minnie F. Low.

Q. What is your address?—A. Business, 1800 Selden Street; home address, 4140 Drexel Boulevard.

By Inspector to attorney for the alien:

Q. You may question the witness.

Attorney to witness:

Q. What is your business?—A. I am superintendent of the Bureau of Personal Service.

Q. That is a welfare organization?—A. Yes. It is a legal-aid department of the Society of Jewish Charities.

Q. In a general way what are its activities?—A. We take care of all work coming under it; we defend and protect the interest of people in the various courts of the city; we have workers in the criminal court, in the boys' court, in the court of domestic relations, in the juvenile court; we give aid to all that need it coming into those courts—there are certain boys turned over to the probation officer, but possibly 80 per cent come to our office—

Q. How long have you known Mr. Louis Worth?—A. Let me see; I came back from my vacation the beginning of September; I have known him since about that time.

Q. What work did he do in connection with the Bureau of Personal Service?—A. He does work for the boys mainly—he has advanced three times since he has been with us, and he is now the senior in that department.

Q. What is the character of the work which he does?—A. He does everything for the good of the boys—we give the right sort of advice to all boys who are brought into these various courts; we do all we can to advise the boys along the right track, so as to keep them out of the courtroom—when the Jewish boys are arrested we have a worker at the boys' court, and Mr. Worth was assigned to that work about the middle of December.

Q. You have had occasion to observe him during the time of your acquaintance with him?—A. I have.

Q. As far as you have observed him with reference to conforming with laws of the United States and the State of Illinois, what has been your observation in regard to him?—A. We have had a boys' welfare for six years, and we never had a worker who was more obedient to law and order or more attentive to his duties. I think it was in the month of December that I found him, Mr. Worth, and two young gentlemen smoking in the dining (adjoining) room, and I told him it was not a good example for young boys, and said that I would prefer that you would not do it—that was all that was necessary; none of them have smoked ever since, so far as I know.

By Inspector:

Q. Of your own knowledge, Mr. Worth is engaged during the day only with the Bureau of Personal Service?—A. Well, he works all day.

Q. You do not know what he might have done after he left the work that he was engaged on at your place?—A. I have had no personal observation; I have had him up at my home.

Q. The man might have been engaged in some activities, and you would not have known of it; is that a fact?—A. That could be.

Inspector to alien:

Q. I show you a suitcase and ask you if this is your property?—A. Yes.

Q. Are all papers and books in this case yours?—A. Yes; that which I looked through a minute ago; some of that correspondence belongs to Shafer.

Q. I show you this book, "The Soviets at Work," and ask you, Where did you purchase this book?—A. I purchased it at a meeting.

Q. Where?—A. At 1221 Blue Island Avenue.

Q. At a meeting of the Communist Party of America?—A. I do not think it was.

Q. You recall what meeting it was?—A. I do not, sir.

Q. I show you a bunch of applications for membership to the Communist Party of America, and ask if they are your property?—A. I do not know.

Q. Did you ever have an application for membership in your possession?—A. I do not think that I ever had.

Q. Are you sure?—A. I am sure.

Inspector to the attorney for the alien:

Q. Are there any further questions you desire to ask or any further evidence or witnesses you wish to offer in this case?—A. No.

Inspector to Mr. Bocock, representing the Bureau of Investigation:

Q. Have you any further questions you wish to ask or any evidence or witnesses to offer in this case in behalf of the Bureau of Investigation?—A. No.

Case concluded.

Report made by Branch Bocock, Chicago, Ill., January 6, 1920.

Title of case and offense charged or nature of matter under investigation: Louis Wirth, radical alien.

Statement of operations, evidence collected, names and addresses of persons interviewed, places visited, etc.: At Chicago, Ill., subject was examined by agent. No warrant on original list. Admits being German alien. Admits being member Communist Party two months. Central Branch, 1221 Blue Island. Subject is student at University of Chicago, having graduated last spring, and now pursuing course of study for M. A. degree. Very intelligent and fully informed on Communist manifesto and program. Student of economics and sociology. Room mate of one Shaffir, said to be secretary of branch. Lot of written material seized among possessions at time of arrest. Disclaims believing in force or violence and states parties who wrote manifesto of Communist Party made a mistake in advocating such methods.

170 INVESTIGATION OF ADMINISTRATION OF LOUIS F. POST.

This fellow, after an extensive examination, all of which was not recorded, does not appear to be bad at heart, although potentially dangerous as a radical in proportion as his ability may be.

Statement of examination attached:

STATEMENT OF LOUIS WIRTH MADE TO MR. ROCOCK, SPECIAL AGENT, BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE, CHICAGO, ILL., JANUARY 6, 1920.

- Q. What is your name?—A. Louis Wirth.
- Q. Where do you live?—A. 6153 University.
- Q. What is your occupation?—A. Student at the Chicago University for the M. A. degree.
- Q. How old are you?—A. Twenty-two.
- Q. Where were you born?—A. Rhine Province, Germany.
- Q. When?—A. August 28, 1897.
- Q. When did you arrive in the United States?—A. Christmas Day, 1911.
- Q. On what ship and line?—A. *President Grant*, Hamburg-American Line.
- Q. At what port did you arrive?—A. New York.
- Q. From what port did you sail?—A. Hamburg.
- Q. Did you pass through the immigration authorities?—A. Yes.
- Q. Where did you go then?—A. Direct from New York to Omaha, Nebr., where I attended the South High School, and received a scholarship for the university, and then came to Chicago, and have been here since.
- Q. Have you any relatives in the United States?—A. Yes. Three uncles on my mother's side. Marx Isrig, Colorado Springs, Colo., president of the Howard Manufacturing Co., at Atchison, Kans.; E. V. Lorig, Omaha, Nebr., 2210 North Street; Victor Lorig, Oberlin, Kans.
- Q. How long have you been a member of the Communist Party?—A. About two months.
- Q. To what branch do you belong?—A. To the Central Branch, 1221 Blue Island Avenue, which is just in an embryonic or formative state, being formed for the students.
- Q. Who was the secretary of that branch?—A. My roommate, Joseph Shaefer, was temporary secretary at one of the meetings of this branch.
- Q. Who were the officers of this branch?—A. I don't know who they were.
- Q. Did you register for the draft?—A. Yes; and was in class 5.
- Q. Did you conform to all enemy alien regulations during the war period?—A. Yes.
- Q. Have you ever been arrested before?—A. No.
- Q. Did you enter the United States under the same name you now have?—A. Yes.
- Q. Have you your naturalization papers?—A. No.
- Q. Do you intend to remain in the United States?—A. I don't know. I had thought of continuing my studies in Europe. (N. B.—Uncertain and indefinite concerning this.)
- Q. Is there any reason for your being opposed to the Government of the United States?—A. No; I am not opposed to it.
- Q. Are you opposed to any organized government?—A. No.
- Q. Are you in favor of the Soviet form of Government in Russia?—A. I believe in every country having the form of government it desires.
- Q. Do you believe in the overthrow of any government by force?—A. I am opposed to force and believe in moral persuasion.
- Q. Do you believe in one big union?—A. The expediency of one big union depends on the circumstances, at all times conforming to the law.
- Q. Are you an I. W. W.?—A. No.
- Q. What papers or periodicals do you read?—A. Being a student of economics I read every available publication.
- Q. Were you ever connected with any revolutionary movement in any other country?—A. No.
- Q. To what clubs, organizations, etc., do you belong?—A. I did belong to the Cosmopolitan Club and was the editor of the Cosmopolitan periodical of that club. I belong to the Phi Beta Kappa Fraternity and the Communist Party, central branch.
- Q. Have you ever attended any radical meetings?—A. Yes; at various places.
- Q. Do you believe in the overthrow of any form of government by force? Or the so-called imperialistic or capitalistic government? If so, by what means would you suggest it be brought about?

N. B.—Subject states that he is opposed to force and revolution; that he has used his influence by argumentation and otherwise to counsel conservatism in opposition to the manufacturing of a revolution, advocating only legal action. He does not believe in the overthrow of the capitalists by force, but advocates the following means: (1) Education, (2) making use of lawful means at hand to better the conditions of the working class.

N. B.—Among papers of subject seized at the time of his arrest appear various radical writings of the Communist Party. See exhibits.

REPORT OF PRELIMINARY INVESTIGATION OF AGENT O'GRADY.

1. Name, Louis Wirth.
2. Address, 6153 University.
3. Name of country in which born, Germany.
4. Age, 22 years.
5. Where do you work (if not working now, where and by whom last employed)? Bureau of personal service, Jewish Aid Society, boys' worker, 1800 Selden Street.
6. How long have you been a member of—
 - (a) The Communist Party of America. Two months.
 - (b) The Communist Labor Party.
 - (c) Unions of Russian workers.
 - (d) Industrial Workers of the World.
7. What branch and where do they meet? Central, 1221 Blue Island Avenue.
8. Where is your card or membership credentials? Don't know.
9. Show me your naturalization papers. Not a citizen.
10. Remarks: Subject attends University of Chicago and does legal work in boys' court.

Witness:

JOHN P. ATCHISON,
Detective Sergeant, Fifth Precinct.

BRIEF ON BEHALF OF LOUIS WORTH.

To the honorable SECRETARY OF LABOR,
Department of Immigration, Washington, D. C.

Chicago File No. 2050/312. Warrant of arrest No. 54859/525.

May it please the Secretary: To single out parts of the record, to emphasize certain statements appearing upon the transcript, to make an argument as to some single phases concerning the question as to whether Louis Worth should be deported, would surely have the undesired effect of doing Louis Worth a grievous injustice. In order that Louis Worth be justly dealt with it is necessary that every word of the transcript in this case be read by the official who passes upon the question as to whether Louis Worth shall be deported or not. All that can be done in this brief is to point out to that official that Louis Worth is a brilliant, young student of the highest ideals, who has permitted his youthful enthusiasm along the line of his chosen work, sociology, to crowd him into a position where one can not definitely say now whether Louis Worth joined the Communist Party of America.

A graduate of the University of Chicago, still engaged in his studies in addition to his work in the boys' court and connected with the Bureau of Personal Service, Louis Worth, the record shows, roomed with one Schafr, a member of the Communist Party, who was active in organizing a branch at the University of Chicago. Persuaded by Schafr, Worth gave a tentative consent to joining the branch, and was later told by Schafr that Schafr had paid initiation fees and dues for him, whereupon he reimbursed Schafr for the small financial outlay. He signed no application himself and received no membership card. He attended one or two meetings and was openly in disagreement with important principles expressed in the manifesto, as will appear from the record.

It is respectfully suggested that the reading of the record in this case will disclose that Louis Worth can become a valuable citizen of the United States; that he is not dangerous to the United States; and that he should not be deported.

Respectfully submitted.

BENJAMIN C. BACHRAD,
Attorney for alien.

BUREAU OF PERSONAL SERVICE,
ADMINISTRATION BUILDING,
Chicago, January 20, 1920.

HON. HARRY R. LANDIS,
United States Department of Immigration,
Chicago, Ill.

DEAR MR. LANDIS: The Bureau of Personal Service respectfully submits the attached letter in regard to Louis Wirth, one of its social workers, with the request that all such matter be attached to Mr. Wirth's record in your department and that the duplicate copies be forwarded to the Department of Labor at Washington.

With sentiments of appreciation, we are
Very truly, yours,

BUREAU OF PERSONAL SERVICE,
MINNIE F. LOW, *Superintendent.*

CHICAGO, January 20, 1920.

Re Louis Wirth.

Louis Wirth is at the present time employed by the Bureau of Personal Service, one of the affiliated bodies of the Associated Jewish Charities of Chicago. The objects of the organization are to provide legal advice and counsel for deserving poor persons of the Jewish faith, to represent them in the courts, to similarly aid the mentally afflicted, and to protect, supervise, and befriend neglected, delinquent, and defective children.

Mr. Wirth was engaged by the bureau on June 15, 1919, in the boys' department, his major work being with adolescent boys. His keen insight and sympathetic understanding of the peculiar problems coming to his notice, his unusual ability and conscientious devotion to duty won for him, in the short period of six months, several promotions, until he is now the senior in the department in question.

Mr. Wirth entered the service of the bureau at a salary of \$75 per month and has since then been given three advances, his salary at the present time being \$125 per month. Mention is made of this fact, because it is rather unusual for charitable organizations to advance workers so rapidly. The intelligent meritorious work done by Mr. Wirth, his excellent conduct, as well as his honesty, integrity, and obedience to the rules and regulations of the organizations, have made his services invaluable.

We can conscientiously say that if deprived of Mr. Wirth's services, the loss to our organization will be irreparable. Few young men with his mental equipment and love for social betterment are willing to work for the comparatively low compensation he receives, in view of the fact that many alluring opportunities for money making and advancement are offered in the commercial world.

Because of the high regard in which Mr. Wirth is held by his teachers, employers, and friends, we sincerely hope that he will be permitted to remain in this country, become an American in good faith, and to continue the humanitarian work for which he is so eminently fitted.

BUREAU OF PERSONAL SERVICE,
MINNIE F. LOW, *Superintendent,*
1800 Selden Street.

DATA REGARDING LOUIS WIRTH.

Louis Wirth, son of Joseph and Rosalie Wirth, born on August 28, 1897, at Gemuenden Hunsrueck, Bezirk Coblenz, Germany. Parents are living in Germany.

Came to the United States in December, 1911. After a short stay in New York went to live with uncle, E. V. Lorig, in Omaha, Nebr.

Attended South High School of Omaha for four years and in the autumn of 1916 entered the University of Chicago. Received the degree of Ph. B. from the U. of C. in June, 1919, having majored in the social sciences.

While going to school earned livelihood by teaching two high-school classes at the Chicago Hebrew Institute for about one and one-half years. Later worked for the Chicago Daily News in the market analysis department as field investigator for a period of nine months.

From December, 1918, until June, 1919 (time of graduation from university), worked in the after-care department of the American Red Cross.

Began working for the Bureau of Personal Service on June 15, 1919, as boys' worker.

Present residence: 6153 University Avenue.

Relatives in the United States: Sister, Flora Wirth, 2210 North Street, Omaha, Nebr., teacher in public schools; uncle, Marx Lorig, 1323 Tejon Street, Colorado Springs, Colo., care of Howard Manufacturing Co., Atchison, Kans.; uncle, E. V. Lorig, 2418 North Street, Omaha, Nebr., merchant; uncle, Victor Lorig, Oberlin, Kans., district superintendent New York Life.

THE UNIVERSITY OF CHICAGO.

To whom it may concern:

This is to certify that I have known Mr. Louis Wirth for about five years while he was a student at this institution. He was a pupil in at least one of my courses and did his work very diligently and successfully. I think I can say quite forcibly that he was in the first rank of students, as far as I have personally had dealings with him, during my connections with the department of history.

In extra class-room association—and I have met him about the campus quite often and spoken with him about his work and aims—I have found him keenly interested and alive to all historical, political, and social developments. In his thinking and attitude I have found him a convinced liberal of great earnestness, who as a matter of conviction was trying his best to understand the tendencies and developments of the present, both in connection with his class-room studies and in practical affairs. As such, also, I think he represents the best type among our student body.

About his personal affairs otherwise I am only slightly informed. I think, however, that for the large part of the expenses of his college training he earned the money by working in various capacities.

I have always found him a gentleman and know nothing in any way which would speak against his character as one of the greatest integrity. This I feel is especially creditable, because he has for quite a number of years now been separated from his family, and to live new came to us and this country while still a mere lad. With reference to the developments in his former home country, Germany, I have spoken with him frequently, and found him to be on this question also quite convicted to the liberal democratic wing of opinion, as far as one coming away in youth can be said to have formed fixed attitudes on public questions.

Taking it all in all, I consider him a liberal thinking, keenly alive, well informed, and sound character.

CARL F. HUTH, Jr.

DEPARTMENT OF HISTORY, January 15, 1920.

THE UNIVERSITY OF CHICAGO,
January 17, 1920,

To the COMMISSIONER OF IMMIGRATION,
Washington, D. C.

DEAR SIR: I am writing this letter at the request of friends of Louis Wirth, an alien who, I understand, has been arrested because of his connection with a radical political organization in this city.

I have known Louis Wirth as a student. He was a good student and, as far as I was able to judge, a fine boy. I know nothing of his political opinions. However, I know the type. With young men of this sort radicalism is normal from the ages of 16 to 30. It is a sort of intellectual growing pain. If he were 30 years of age and showed symptoms of general mental instability the case would be a quite different one.

I make this statement because I have been told that you intend to deal with these cases on their individual merits. In that case this letter may be of service to you. I am,

Very truly,

ROBERT E. PARK,
Department of Sociology.

CHICAGO, January 14, 1920.

To whom it may concern:

I desire to make a statement about Mr. Louis Wirth, who was a student in my classes in European history at various times in the years 1917 to 1919, inclusive. Mr. Wirth has considerable native gifts which enabled him to bear upon

the subject matter treated in class, a high degree of information, and a penetrating analysis. He has always among the best students who contributed in the liveliest way to the discussions. In addition to the qualities of his mind, I had reason to respect his regularity, his self-discipline, and his tolerance of the opinions of others. I never discovered the least trace of addiction to the methods of violence. I found him distinctly likable as well as reliable and I am glad to be counted among his friends.

FERDINAND SCHEVILL,
Professor of Modern European History, the University of Chicago.

Then the next case to which I wish to call attention is the Dudinsky case.

Mr. TINCHER. Now, Mr. Chairman, I do not want to—

Mr. POST. Mr. Chairman, I object to having men come into this committee and interrupting this proceeding until I am through, and asking questions.

The CHAIRMAN. Members of Congress have access to this committee.

Mr. POST. Very well.

The CHAIRMAN. This committee is one of the instruments through which the House does its business.

Mr. POST. As long as I am given the necessary time, I shall make no objection.

Mr. TINCHER. I want to suggest here, if the gentleman has any part of the testimony in the Wirth case on which he says any one can be justified in discharging Wirth, I would like to have him call this committee's attention to that part of the testimony. I do not know what testimony he is going to put in the record here.

Mr. POST. I am going to put the whole of the testimony in.

Mr. TINCHER. If there is anything in view of Wirth's own statement that would justify a cancellation, without nullifying the law, I think it would be well to call this committee's attention to that part of the testimony.

Mr. POST. If the committee wishes me to take the time to read all that evidence, I will read it. I did not suppose it would be necessary to read all of the evidence.

The CHAIRMAN. The evidence is already in.

Mr. POST. Well, yes; you have admitted it, and I will put a copy of it in.

Mr. ALBERT JOHNSON. I would like to make a request. Here is a record presented where it is claimed some extraneous matter was added in the rooms of the Committee on Immigration—or copies—in the Truss case. I am unable to remember at this moment whether the Truss case was among what was reported to be the files taken out by our committee, on written request. I would like to know if the files are double-headed down there; if there are double sets. Then, again, I want to say, if we are going to put files in the record, I have a list here of 60 cases that will need inquiry and in which this committee or the Committee on Immigration will ask for the full testimony and all the files.

The CHAIRMAN. That will be taken up at the proper time.

Mr. POST. Suppose we let Mr. Post go on and make his statement now, without interruption, unless it becomes absolutely necessary.

The CHAIRMAN. Yes.

Mr. Post. I call attention to the fact, so that it may not escape, in view of Congressman Johnson's remark, that Mr. Stump's letter calling attention to that particular special agent's statement is dated April 13, which was after the Truss case was decided, and the statement may or may not have been in the file at the time. I can not remember that. But the statement he incloses is an unsworn statement and would have been of no evidentiary value, if it were there.

With the Wirth case, I shall ask the committee also to admit the letters that accompanied that case, which describe the arrest. I am not insisting upon that, but I think they ought to go in. Nevertheless, if the committee thinks those letters, not being sworn to, and being put before the commissioner at Chicago by friends of Mr. Wirth, ought not to go in, I concede they are not evidence. But they are just as good evidence as any of the mass of matter the Immigration Committee has put in here instead of putting in the evidence, to which they had access as well as to the documents, the extraneous documents and nonlawful documents that they did put in.

Now, the Dudinsky case. That has been commented upon quite extensively. It is on page 26 of this printed record that the Committee on Immigration has put in. It has a rather extended introduction by the Sergeant-at-Arms. It then has, under date of March 20, a memorandum signed by the Commissioner General to the Assistant Secretary; it has the Assistant Secretary's memorandum in reply to that; it has another memorandum signed by the Commissioner General, dated March 23; it has a letter dated March 27, signed by J. E. Hoover, special assistant to the Attorney General; it has a letter from Charles Recht, the attorney for the defendant; it has another memorandum signed by the Commissioner General, dated March 30, 1920—

The CHAIRMAN. Do these memorandums or letters review the testimony?

Mr. Post. They purport, some of them, to review the testimony. I am calling attention to them to show how very elaborate the Immigration Committee's report was up to the point of introducing the evidence, which was the only basis for the action of the Secretary, and that they have omitted in this case as in several others. I ask to insert it at this point.

HEARING IN THE CASE OF JOHN DUDINSKY (OR IVAN DUDINSKY).

Present on behalf of the Government: Inspector V. G. Macintosh, Secretary N. S. Carlin, Interpreter Vincent Daukszys.

Alien delivered at Ellis Island January 3, 1920, by Department of Justice agents.

Hearing at Ellis Island, New York, N. Y., January 23, 1920, on department warrant of arrest 54910/346, dated December 29, 1919.

The alien was present in person.

Alien, sworn by Inspector Macintosh through Interpreter Daukszys, states: "I refuse to be sworn because I will not answer anything until I see my lawyer."

Q. What is your correct name?—A. John Dudinsky.

Q. Have you ever gone under any other name?—A. I will not answer until I see my lawyer.

Q. How old are you?—A. 31.

Q. Are you married?—A. Single.

Q. What has been your last address?—A. 403 South Seventh Street, Newark, N. J.

Q. With whom did you live there?—A. I had a room with a private family.
 Q. Where were you born?—A. Hresk, Gubernia Minsk, Russia.
 Q. Of what country are you at the present time a citizen or subject?—A. Russia.

Q. What race are you?—A. I refuse to answer.

Q. Did you ever apply for first United States citizenship papers?—A. I refuse to answer.

Q. State the name and last address of your nearest relative in Russia.—A. I refuse to answer.

Q. When did you come to the United States the last time?—A. I refuse to answer.

Q. Are you a member of the Communist Party of America?—A. I refuse to answer without my lawyer.

Q. Do you deny that you are a member of the Communist Party of America?—A. I will not answer until I see my lawyer.

Q. Do you refuse to answer any and all questions that may be asked you here?—A. Yes; I will not answer any questions until I see my lawyer.

Q. The Government records in your case show that you are recording secretary of the first Russian branch of the Communist Party in Newark, N. J.; that you were a delegate to the convention at Chicago where the Communist Party was formed; also that you were a delegate to several other conventions. Do you deny this?—A. I will not answer without my lawyer.

Q. The Government records also show that you were a delegate to the Detroit convention of the Communist Party within the past few weeks—do you deny this?—A. I will not answer without my lawyer.

Q. When you were examined by officials of the Department of Justice in Newark, N. J., on January 3, 1920, did you tell them that you were a delegate from New Jersey of the Communist Party that went to Chicago; also that you represented that party at the Detroit convention?—A. I will not answer without my lawyer.

(Copy of Department of Justice report, marked "Exhibit A," is made part of the record in this case.)

Q. Did you not tell them that you had read the constitution and manifesto adopted in Moscow by the Third International and believed in it?—A. I will not answer without my lawyer.

Q. I show you letter dated January 24, 1919, signed with your name as secretary of the first Russian branch of the Communist Party, Newark, N. J., and stamped with the Communist Party stamp. Do you deny that you wrote this letter or had anything to do with the writing of same?—A. I refuse to answer without my lawyer.

(Letter above referred to, marked "Exhibit B," is made part of the record in this case.)

Q. I introduce as evidence in your case, copy of which, marked "Exhibit C," is made part of the record in this case, affidavit of Frank R. Stone, special agent of the Department of Justice, which states that you are a member of the Communist Party of America. Do you deny that this is true?—A. I refuse to answer until I see my lawyer.

COMMUNIST PARTY.

I introduce as evidence in your case and make same part of the record, marked "Exhibit 1," a copy of Volume 1, No. 1, of the Communist, official paper of the Communist Party of America, issued at Chicago, Ill., Saturday, July 19, 1919, entitled, "Call for a national convention for the purpose of organizing the Communist Party of America." I read from Exhibit 1, page 1, as follows:

"In this, the most momentous period of the world's history, capitalism is tottering to its ruin. The proletariat is straining at the chains which bind it. A revolutionary spirit is spreading throughout the world. The workers are rising to answer the clarion call of the third international.

"No other course is possible; therefore we, the minority delegates at the left-wing conference, call a convention to meet in the city of Chicago on September 1, 1919, for the purpose of organizing a Communist Party in America.

"This party will be founded upon the following principles:

"1. The present is the period of the dissolution and collapse of the whole capitalist world system, which will mean the complete collapse of world cul-

ture, if capitalism with its unsolvable contradictions is not replaced by communism.

"2. The problem of the proletariat consists in organizing and training itself for the conquest of the powers of state. This conquest of power means the replacement of the State machinery of the bourgeoisie with a new proletarian machinery of government.

"3. This new proletarian state must embody the dictatorship of the proletariat, both industrial and agricultural, this dictatorship constituting the instrument for the taking over of property used for exploiting the workers, and for the reorganization of society on a communist basis.

"5. The present world situation demands the closest relation between the revolutionary proletariat of all countries."

I read from page 2, "Exhibit 1," as follows:

"PROGRAM OF THE CALL.

"We favor international alliance of the socialist movement of the United States only with the communist groups of other countries, such as the Bolsheviks of Russia, Spartacans of Germany, etc., according to the program of communism as above outlined.

"2. We are opposed to association with other groups not committed to the revolutionary class struggle, such as labor parties, nonpartisan leagues, people's councils, municipal ownership leagues, and the like.

"3. We maintain that the class struggle is essentially a political struggle—that is, a struggle by the proletariat to conquer the capitalist state, whether its form be monarchistic or democratic republican, and to destroy and replace it by a governmental structure adapted to the Socialist transformation."

I introduce as evidence in your case and make same part of the record, marked "Exhibit 2," application for membership Communist Party of America. I read from Exhibit 2, as follows:

"The undersigned, after having read the constitution and program of the Communist Party, declares his adherence to the principles and tactics of the party and the Communist International, agrees to submit to the discipline of the party as stated in its constitution, and pledges himself to engage actively in its work."

I introduce as evidence in your case and make part of the record, marked "Exhibit 3," membership card Communist Party of America, on the front page of which appears "Communist Party of America affiliated with the Communist International."

I introduce as evidence in your case and make same part of the record, marked "Exhibit 4," pamphlet No. 1, manifesto and program, constitution and report to the Communist International, issued by the Communist Party of America. I read from page 6 of Exhibit 4 as follows:

"There is a common policy that characterizes moderate Socialism; that is, its conception of the State. Out of the conception that the bourgeois parliamentary state is the basis for the introduction of socialism developed a directly counter-revolutionary policy. Communism rejects this conception of the State. It rejects the idea of class reconciliation and the parliamentary conquest of capitalism. The Communist Party alone is capable of mobilizing the proletariat for the revolutionary mass struggle to conquer the power of the State. The Communist Party realizes that it is necessary to develop separate organs of working class political power by means of which to crush the resistance of capitalism and establish the Communist commonwealth."

I read from page 8 of Exhibit 4, as follows:

"Strikes are developing, verging on revolutionary action, and in which the suggestion of proletarian dictatorship is apparent. The striking workers try to usurp functions of industry and Government, as in the Seattle and Winnipeg general strikes."

I read from page 9 of Exhibit 4, as follows:

"The proletarian class struggle is essentially a political struggle. It is a political struggle in the sense that its objective is political—overthrow of the political organizations upon which capitalist exploitation depends, and the introduction of a proletarian State power. The objective is the conquest by the proletariat of the power of the State.

"Communism does not propose to 'capture' the bourgeois parliamentary State, but to conquer and destroy it."

I read from page 10 of Exhibit 4, as follows:

"The conquest of the power of the State is accomplished by the mass power of the proletariat.

"The mobilizing of this control against capitalism means the initial form of the revolutionary mass action that will conquer the power of the State."

I read from page 12 of Exhibit 4, as follows:

"The proletarian revolution comes at the moment of crisis in capitalism, of a collapse of the old order. Under the impulse of the crisis, the proletariat acts for the conquest of power, by means of mass action. Mass action concentrates and mobilizes the forces of the proletariat, organized and unorganized; it acts equally against the bourgeois State and the conservative organizations of the working class. Strikes of protest develop into general political strikes, and then into revolutionary mass action for the conquest of the power of the State. Mass action becomes political in purpose while extra-parliamentary in form; it is equally a process of revolution and the revolution itself in operation."

I read from page 14 of Exhibit 4, as follows:

"The Communist Party is the conscious expression of the class struggle of the workers against capitalism. Its aim is to direct this struggle to the conquest of political power, the overthrow of capitalism, and the destruction of the bourgeois State.

"The Communist Party prepares itself for the revolution in the measure that it develops a program of immediate action, expressing the mass struggles of the proletariat. These struggles must be inspired with revolutionary spirit and purposes.

"The Communist Party is fundamentally a party of action. It brings to the workers a consciousness of their oppression, of the impossibility of improving their conditions under capitalism. The Communist Party directs the workers' struggle against capitalism, developing fuller forms and purposes in this struggle, culminating in the mass action of the revolution."

I read from page 15 of Exhibit 4, as follows:

"The Communist Party maintains that the class struggle is essentially a political struggle—that is, a struggle to conquer the power of the State."

I read from page 16 of Exhibit 4, as follows:

"(b) Shop committees shall be organized wherever possible for the purpose of Communist agitation in a particular shop or industry by the workers employed there. These committees shall be united with each other and with the Communist Party, so that the party shall have actual contact with the workers and mobilize them for action against capitalism."

I read from page 18 of Exhibit 4, as follows:

"In close connection with the unskilled workers is the problem of the negro worker. The negro problem is a political and economic problem. The racial oppression of the negro is simply the expression of his economic bondage and oppression, each intensifying the other. This complicates the negro problem but does not alter its proletarian character. The Communist Party will carry on agitation among the negro workers to unite them with all class-conscious workers."

I read from pages 18 and 19 of Exhibit 4, as follows:

"THE PARTY CONSTITUTION.

"SECTION 1. *Name and purpose.*—The name of this organization shall be the Communist Party of America. Its purpose shall be the education and organization of the working class, for the establishment of the dictatorship of the proletariat, the abolition of the capitalist system, and the establishment of the Communist society.

"SECTION 1. *Emblem.*—The emblem of the party shall be a button with the figure of the earth in the center in white with gold lines and a red flag across the face bearing the inscription, 'All power to the workers'; around the figure of the earth a red margin shall appear, with the words 'The Communist Party of America,' and 'The Communist Internationale' on this margin in white letters."

I read from page 26 of Exhibit 4, from the report of Louis C. Fraina, international secretary of the Communist Party of America, to the executive committee of the International, as follows:

"As the international secretary, I make application for admission of the Community Party of America to the bureau of the communist international as a major party."

I introduce as evidence in your case and make same part of the record, marked "Exhibit 5," the manifesto of the first congress of the communist international, held at Moscow, March 2-6, 1919, issued March 10 and signed Charles Rakovsky, N. Lenin, G. Zinoviev, Leon Trotsky, Fritz Platten. Text received direct from Moscow. I read from pages 2 and 3 of Exhibit 5, as follows:

"The Communist Parties, far from conjuring up civil war artificially, rather strive to shorten its duration as much as possible, in case it has become an iron necessity, to minimize the number of its victims, and, above all, to secure victory for the proletariat. This makes necessary the disarming of the bourgeoisie at the proper time, the arming of the laborer, and the formation of a communist army as the protector of the rule of the proletariat and the inviolability of the social structure. Such is the Red Army of Soviet Russia, which arose to protect the achievements of the working class against every assault from within or without. The soviet army is inseparable from the soviet State.

"Humanity, whose whole culture now lies in ruins, faces danger of complete destruction. There is only one power which can save it—the power of the proletariat. The old capitalist 'order' can exist no longer. The ultimate result of the capitalistic mode of production is chaos—a chaos to be overcome only by the great producing class, the proletariat. It is the proletariat which must establish real order, the order of communism. It must end the domination of capital, make war impossible, wipe out State boundaries, transform the whole world into one cooperative commonwealth, and bring about real human brotherhood and freedom.

"World capitalism prepares itself for the final battle. Under cover of the 'League of Nations' and a deluge of pacifist phrasemongering, a desperate effort is being made to pull together the tumbling capitalist system and to direct its forces against the constantly growing proletarian revolt. This monstrous new conspiracy of the capitalist class must be met by the proletariat by seizure of the political power of the State, turning this power against its class enemies, and using it as a lever to set in motion the economic revolution. The final victory of the proletariat of the world means the beginning of the real history of free mankind.

"Seizure of political power by the proletariat means destruction of the political power of the bourgeoisie. The organized power of the bourgeoisie is in the civil state, with its capitalistic army under control of bourgeois-junker officers, its police and gendarmes, jailers and judges, its priests, Government officials, etc. Conquest of the political power means not merely a change in the personnel of ministries but annihilation of the enemy's apparatus of government; disarmament of the bourgeoisie, of the counter-revolutionary officers, of the white guard, arming of the proletariat, the revolutionary soldiers, the red guard of workmen; displacement of all bourgeois judges and organization of proletarian courts; elimination of control by reactionary Government officials and substitution of new organs of management of the proletariat. Victory of the proletariat consists in shattering the enemy's organization and organizing the proletarian power; in the destruction of the bourgeois and upbuilding of the proletarian state apparatus. Not until the proletariat has achieved this victory and broken the resistance of the bourgeoisie can the former enemies of the new order be made useful, by bringing them under control of the communist system and gradually bringing them into accord with its work.

"The proletarian state, like every state, is an organ of suppression, but it arrays itself against the enemies of the working class. It aims to break the opposition of the despoilers of labor, who are using every means in a desperate effort to stifle the revolution in blood, and to make impossible further opposition. The dictatorship of the proletariat, which gives it the favored position in the community, is only a provisional institution. As the opposition of the bourgeoisie is broken, as it is expropriated and gradually absorbed into the working groups, the proletarian dictatorship disappears, until finally the state dies and there are no more class distinctions."

I read from page four of Exhibit 5, as follows:

"The proletarian dictatorship, with their cooperation, will retrieve the separation of physical and mental work which capitalism has developed and thus will science and labor be unified. Besides expropriating the factories, mines, estates, etc., the proletariat must also abolish the exploitation of the people by capitalistic landlords, transfer the large mansions to the local workers' councils, and move the working people into the bourgeois dwellings.

"The revolutionary era compels the proletariat to make use of the means of battle which will concentrate its entire energies, namely, mass action, with its logical result, direct conflict with the governmental machinery in open combat. All other methods, such as revolutionary use of bourgeois parliamentarism, will be of only secondary significance."

I introduce as evidence in your case and make same part of the record, marked "Exhibit 6," a copy of the proclamation of the Communist Party of America entitled "The Capitalists Challenge You, Workingmen."

I read from page 2 of Exhibit 6, as follows:

"The National Government, the capitalist State, has stepped in. The Steel Trust was in danger of being beaten. It might have to submit before the power of the workers. To save itself it brought into the field the instrument forged by the capitalists to uphold their system of exploitation and oppression—the State—which in spite of all its democratic pretensions is but the physical expression of the dictatorship of the capitalist class.

"Gather in great mass meetings. Bring to the attention of the unenlightened workers the meaning of martial law at Gary. Show them that it is not enough to strike against low wages and bad working conditions but that the strike must be directed against capitalism.

"The workers must capture the power of the State, they must wrest from the capitalists the means through which the capitalists' rule is maintained."

I introduce as evidence in your case and make same part of the record, marked "Exhibit 7," copy of the proclamation by the Communist Party of America, entitled "The State—Strike Breaker."

I read from page 1 of Exhibit 7, as follows:

"Workers, you have been told that the Government of the United States is a Government 'of the people, by the people, and for the people.' The communists have told you that it is a Government 'of the capitalists, by the capitalists, and for the capitalists.'

"They made their demands upon the coal-mine owners. These capitalists standing alone had no power to resist the demands of the workers. The workers could close the mines and prevent the capitalists from making profits. If they were sufficiently conscious of the way to free themselves from exploitation, they could even take over the mines and operate them, without paying profits to the capitalists."

I read from page 2 of Exhibit 7, as follows:

"The State does not coerce the capitalists; it does not tell the capitalists they must yield to the demands of the miners in order to prevent the stoppage of the mining of coal. The State never coerces the capitalists; its legal machinery is never directed against the capitalist (except occasionally against minor groups of individuals in the interest of the whole capitalist class). Its army is never used to destroy the lives of the capitalists. The State coerces the workers. Its legal machinery is used to enforce the demands upon the workers. Its army is used to destroy the lives of the workers who dare demand a living wage and a little more sunshine and fresh air.

"The Government of the United States, which some workers have been fooled into believing is a government 'of the people, by the people, and for the people,' is in reality the government 'of the capitalists, by the capitalists, and for the capitalists.' It is the instrument through which industrial slavery is maintained.

"The workers can not win their freedom, they can not win even a living wage and a little more sunshine and fresh aid, while the capitalists control the power of the State.

"The workers must conquer that power. They must make themselves the ruling class. They must establish in the place of the dictatorship of the capitalists the dictatorship of the proletariat."

I introduce as evidence in your case and make same part of the record, marked "Exhibit 8," leaflet No. 3, issued by the Communist Party of America, 1219 Blue Island Avenue, Chicago, Ill.

I read from page 1 of Exhibit 8, as follows:

"It should be your shop (or your factory, your store, your mill, your mine, or your railroad), yours to work in, yours to produce in, yours to manage with the help of your fellow workers.

"There is enough wealth produced to give these things to all who work. But the capitalists own the shops that should be yours. The capitalists make

you work long hours under bad working conditions; they take from you as their profit the lion's share of what you produce.

"They will do that as long as they own and control the shop. There is no hope as long as the shop is not yours.

"The Russian workers organized their power. They created shop committees in every plant and united these in workers' councils. Thus they built up the means for united action. When the crisis came they were prepared to use their mass power. Before their mass power the government of the capitalists and landowners broke up and disappeared. The workers' council became the organs of the working class government. The workers controlled the State power; the police the Army."

I read you from page 2 of Exhibit 8, as follows:

"Workers, you must build up the organs of working-class power if you are to win your freedom. The shop organization is the basis for the organization of the mass power of the workers. Prepare to take control of your shop, of your work, of your lives, and happiness. Organize and make it your shop."

Q. You have seen the exhibits offered as evidence in your case and heard extracts therefrom read into the record. Do you desire to make any comment regarding the same?—A. I will not say anything until I see my lawyer.

Q. Are you a member of or affiliated with an organization that entertains a belief in the overthrow by force or violence of the Government of the United States?—A. I will not answer until I see my lawyer.

Q. Do you deny that you are a member of or affiliated with an organization that entertains a belief in the overthrow by force or violence of the Government of the United States?—A. I will not answer until I see my lawyer.

Q. Are you a member of or affiliated with an organization that advocates the overthrow by force or violence of the Government of the United States?—A. I will not answer until I see my lawyer.

Q. Do you deny that you are a member of or affiliated with an organization that advocates the overthrow by force or violence of the Government of the United States?—A. I will not answer until I see my lawyer.

Q. Are you a member of or affiliated with an organization that advocates the overthrow by force or violence of all forms of law?—A. I will not answer until I see my lawyer.

Q. Do you deny that you are a member of or affiliated with an organization that advocates the overthrow by force or violence of all forms of law?—A. I will not answer until I see my lawyer.

Q. Are you a member of or affiliated with an organization that teaches opposition to all organized government?—A. I will not answer until I see my lawyer.

Q. Do you deny that you are a member of or affiliated with an organization that teaches opposition to all organized government?—A. I will not answer until I see my lawyer.

Q. Are you a member of or affiliated with an organization that entertains opposition to all organized government?—A. I will not answer until I see my lawyer.

Q. Do you deny that you are a member of or affiliated with an organization that entertains opposition to all organized government?—A. I will not answer until I see my lawyer.

Q. I show you warrant for your arrest, issued by the Acting Secretary of the Department of Labor, Washington, D. C., December 29, 1919, copy of which, marked Exhibit D, is made part of the record in this case. Have you anything to say regarding this [warrant shown and read to alien]?—A. I will not answer anything until I see my lawyer.

Q. This hearing is given you to show cause, if any there be, as to why you should not be deported. Have you anything to say in your behalf?—A. I will not answer anything until I consult my lawyer.

Q. Under the law you have the right to be represented by counsel. Do you wish to secure the services of same?—A. Charles Recht is my lawyer.

Q. Pending disposition of your case the warrant provides for your release upon a satisfactory bond in the sum of \$10,000. Can you furnish such a bond?—A. I will try to arrange with my lawyer to furnish a bond.

(Case adjourned for appearance of counsel.)

CONTINUATION OF HEARING ADJOURNED JANUARY 23, 1920, IN THE CASE OF JOHN DUDINSKY (OR IVAN DUDINSKY).

Present on behalf of the Government: Inspector V. G. Macintosh, Secretary Benedict Carlin, Interpreter Vincent Daukszys.

The alien was present in person.

Hearing held at Ellis Island, New York Harbor, January 28, 1920.

Alien sworn by Inspector Macintosh through Interpreter Daukszys, states: "I refuse to swear, as I am not going to answer any questions until my lawyer will be present."

Q. What is your correct name?—A. John Dudinsky.

Q. You stated at your first hearing that your last address had been 403 South Seventh Street, Newark, N. J.; is this not a fact?—A. Yes, sir.

Q. Did you ever live at 423 East Fifty-first Street?—A. I gave you my last address. I am not going to answer any more until I consult my lawyer.

Q. Did you ever live at 25 Stuyvesant Street?—A. I will not answer to any questions until I see my lawyer.

Q. Did you ever live at 479 South Twelfth Street?—A. I will not answer without my lawyer.

Q. I show you herewith, marked "Exhibit E" and made a part of the record in this case, membership card of the Communist Party of America, made out in your name, the address thereon being given at 479 South Twelfth Street. Do you deny that this card was issued to you?—A. I will not answer without my lawyer.

Q. On this card it is stated that you are a member of the First Russian Branch of Essex County, N. J. Do you deny this?—A. I will not answer without my lawyer.

Q. You stated at your last hearing that you had secured Charles Recht, an attorney, to represent you. Do you know whether or not he has entered his appearance in your case?—A. I notified him, but don't know what he has done.

(Case adjourned for appearance of counsel.)

CONTINUATION OF HEARING ADJOURNED JANUARY 28, 1920, IN THE CASE OF JOHN DUDINSKY OR IVAN DUDINSKY.

Present on behalf of the Government: Inspector V. G. Macintosh, Secretary Benedict Carlin, Interpreter Vincent Daukszys.

The alien was present in person.

Hearing held at Ellis Island, N. Y., February 26, 1920, on department warrant of arrest No. 54810/346, dated December 29, 1919.

Alien represented by Attorney D. S. Barr, Room 309, 47 West Forty-second Street, New York, N. Y., who was also present.

Alien, sworn by Inspector Macintosh through Interpreter Daukszys, states: "I refuse to be sworn."

By Inspector MACINTOSH:

Q. Will you answer truthfully the questions that will be put to you at this hearing?—A. I positively refuse to answer any question.

Q. Do you refuse to answer questions on the advice of your counsel?—A. I will not answer any of your questions on account of when I was arrested no warrant was shown, and now I leave all my case to the court.

Q. Are you the man who was examined before me January 28, 1920, under the name of John Dudinsky?—A. My name is John Dudinsky.

Q. Are you the man who was examined before me on January 28, 1920?—A. You know my name is John Dudinsky. If you called me by that name to-day, and I appeared, my name is John Dudinsky.

I offer as evidence in this case, marked "Exhibit F" and made a part of this record, membership card in the Socialist Party of America, Russian Branch, Essex County Local, State of New Jersey, made out in the name of John Dydinsky, the address thereon being given as 479 South Twelfth Street, Newark, N. J., admitted November 21, 1917, and inside of this card shows for the month of September, 1919, Communist Party of America temporary dues stamp, and under the notation on this card, "Special Stamps," there is a Communist Party, Newark, N. J., Section, Convention and Propaganda Stamp, dated August, 1919, 50 cents.

I offer as evidence in this case, marked "Exhibit G," photostat copy of correspondence found in the possession of one Walter Gabriel, secretary of the Communist Party of America, which reads as follows: "Delegates to the Essex County Communist Party: B. Miller, 35 Perkin Avenue, city; J. Dudinsky, 113 East Tenth Street, New York City."

I offer as evidence in this case, marked "Exhibit H" and made part of the record in this case, photostat copy of Western Union telegram found in the possession of Walter Gabriel, secretary of the Communist Party of America, which reads as follows:

CHICAGO, ILL., August 31.

Mr. GAMBRIEL,
50 Hobson Street, Newark:

Kindly inform me if I am elected delegate to convention. Telegraph immediately.

DUCHUSKY DUDYNSKY,
1221 Blue Island Avenue.

I offer as evidence in this case, marking same "Exhibit I," and make it a part of this record, letter and envelope addressed to Mr. John Dudinsky at 403 South Seventh Street, Newark, N. J., which letter is dated Chicago, Ill., January 2, 1920.

I offer as evidence in this case, marking same "Exhibit J," and make it a part of this record, extracts taken from lines 1 to 5, page 54 of protocol book of the city agitation committee of the Russian Federation of the Socialist Party and Communist Party at Newark, N. J., in which it is stated under date of October 24, 1919, protocol of the united meeting Russian Branches Communist Party, city of Newark, that they elected Comrade I. Dudinsky the chairman.

I offer as evidence in this case, marking same "Exhibit K," and make it a part of this record, extract taken from page 57, lines 19 to 24, from the protocol book of the city agitation committee of the Russian Federation of the Socialist Party and Communist Party at Newark, N. J., in which under date of October 24, 1919, protocol of the united meeting Russian Branches Communist Party, city of Newark, that was held on the 24th of October, 1919, in the presence of the members of the first and second branches that Comrade Dudinsky suggests to boycott lectures of that group that leave the Communist Party. He suggests that somebody should be present on the 26th of October at lecture as a correspondent.

Attorney BARR to alien:

Q. Mr. Dudinsky, you have stated on direct examination that you would decline to answer questions at this hearing. Do you wish to make any statement as to why you refuse to answer these questions? You may, if the inspector will permit you, use the written statement that you have in your pocket to read from.—A. I refuse to answer because I was arrested illegally without the proper warrant; the warrant that was shown to me at these hearings was made later after I was arrested. I refuse to answer these questions on the ground that my answers might be used to support accusations against me. Evidence obtained at these hearings could be utilized as data against me. The Immigration Bureau and Department of Labor are not in position to guarantee immunity from any criminal proceedings. I further decline to answer on the ground that the verdict may deprive me of my property without the proper legal process. I find according to the laws and regulations the Government must prove their accusations preferred against me. I am not obliged to confirm or to deny any data, and I have a right if I prefer so to refuse any answers. Let the Government prove the legality of their case. I refuse to answer questions regarding my political convictions on the ground that I believe that convictions of any man are something sacred and are not the subject of inquiry of any court. I also decline to answer questions in regard to membership cards and documents that are alleged to prove my affiliation with the party. They are not written by me and no connection between my person and these documents was established. I refuse to answer the questions on the ground that persons who have submitted affidavits to testify against me are not present at this hearing.

Inspector MACINTOSH to alien:

Q. When you were examined by me on January 23, 1920, the hearing was given you at that time in accordance with the rules and regulations issued by the Department of Labor then in force. At that hearing you declined to answer most of the questions until you could secure the services of counsel. Since your last hearing the Acting Secretary of the Department of Labor has promulgated a new rule regarding the appearance of counsel at the beginning of a hearing.

Now, at this hearing you have been represented by counsel. Do you still decline to answer questions that have been put to you regarding your membership in the Communist Party of America?—A. I am going to refuse to answer all the questions, as all the evidence the Government produces was obtained illegally and therefore I have a legal right to refrain from answering questions, and let the Government prove their contentions.

Attorney BARR to alien:

Q. Do you want to request at this hearing that the persons who have made statements or affidavits which have been admitted into evidence against you be produced at this hearing to be sworn in and to testify and to be subjected to cross-examination by you?—A. Yes, sir; I request that all the persons who gave evidence against me be produced here.

Q. There has been offered in evidence in this hearing against you copy of a warrant marked "Exhibit D" at this hearing, dated December 29, 1919, calling for the arrest of Ivan Dudinsky, and I ask you, were you shown this warrant or any warrant calling for your arrest at the time of your arrest?—A. After being arrested when I asked the agents of the Department of Justice to show me a warrant, so they showed me two clubs on each side of me, so certainly I had to keep quiet, and I haven't seen any until at the last hearing here I was shown it.

Q. There has been offered in evidence and marked "Exhibit C" in this hearing an affidavit of Special Agent of the Department of Justice Frank R. Stone in which it is alleged that upon information and belief he is informed that you are a member of the Communist Party of America and an anarchist. Do you wish to request that the said Frank R. Stone be produced at this hearing in order to testify and be sworn in and subjected to cross-examination by you as to the nature of the contents of this affidavit?—A. Certainly the person that accuses me should appear here.

Q. There has been offered in evidence in this hearing against you and marked "Exhibit B" a typewritten sheet purporting to be a translation of a letter dated December 24, 1919, written in Russian. Was this paper offered in evidence at this hearing taken from you by any Government agent in accordance with a warrant of search and seizure shown you at the time it was taken?—A. I refuse to answer those questions on the ground that no papers were taken from me at the time I was arrested and because any matter that is presented against me could be used in further proceedings against me.

Q. Is your answer therefore the same to all questions that I may put to you concerning all other cards or documents or papers that may be or have been offered against you at this hearing?—A. I refuse to answer all the questions according to my previous announcement.

Inspector MACINTOSH to alien:

Q. Should the Government see fit to close your case, is there anything further that you would like to say regarding the charges contained in the warrant for your arrest?—A. In regard to all this, I want to protest against all these hearings and I put my case into the hands of my lawyer.

MARCH 12, 1920.

The following letter was received to-day from Charles Recht, counsellor at law, 47 West Forty-second Street, New York.

MARCH 9, 1920.

COMMISSIONER OF IMMIGRATION,

Ellis Island, N. Y.

Attention of Augustus P. Schell.

DEAR SIR: Confirming our conversation of to-day it is agreed that the case of John Dudinsky be considered closed.

Yours, very truly,

CHARLES RECHT.

Charles Recht, attorney, telephoned Mr. Schell to-day (Mar. 12, 1920) that all cases now pending at Ellis Island where his representatives have requested Department of Justice agents or officers to appear as witnesses, he desires the request to be stricken from the record. He stated, however, that he would not bind himself in further cases, but he considered those now held at Ellis Island not to be important, and he does not desire to call witnesses.

Exhibits 1 to 8 (Communist Party), referred to in this record, are on file in the bureau, and should be considered in connection with this case.

Case closed March 12, 1920.

EXHIBIT A.

The following-named alien was examined by Special Agent Frank R. Stone, in the office of the United States attorney in Newark, N. J., on January 3, 1920, touching his right to be and remain in the United States.

Present: Immigrant Inspector Wm. Fader, Immigrant Interpreter J. Dautchetz, Stenographers Maurice Edelstein and Samuel Wolff.

What is your name? Ivon Dudinsky (#16). Age, 31.

Address? 403 South Seventh Street, Newark, N. J.

Married? No.

Of what country are you a subject? Russia.

Have you taken any steps to become a citizen of the United States? No.

When and by what vessel did you arrive in the United States?

Don't remember ship or port of sailing.

How long have you been a member of the Communist Party? I belong to the Socialist Party. I was a delegate from New Jersey of the Communist Party that went to Chicago, and I represented the Communist Party at the convention in Detroit also in 1919. I never was a member of the executive committee of the Communist Party. I was not arrested in Detroit with Alexander Stocklitzky, but I was questioned by the Department of Justice.

Are you familiar with the program and manifesto of that party? I read the program.

Do you subscribe to the principles expounded therein? Are you familiar with, and do you believe in the constitution and manifesto adopted in Moscow by the third international? I read it, and I believe in it.

EXHIBIT B.

Translated from Russian by Reuben Volavick, interpreter.

FIRST RUSSIAN BRANCH, COMMUNIST PARTY,

NEWARK, N. J.,

December 24, 1919.

To the Local Communist Party of America.

DEAR COMRADES: At the meeting of the first branch the case of Comrade Miller was taken up and a hearing was given to the committee authorized to inquire into the facts in connection with the charges made. As the committee was unable to produce any facts in the matter owing to the union refusing to give any, the first branch considers Miller as a member of two years' standing, does not find in his conduct anything detrimental to our movement, exonerates him and recommends to the local to act accordingly and to consider Miller as a member of the Communist Party on an equality with other members.

SECRETARY I. DUDINSKI.

[Stamp of Communist Party of America.]

EXHIBIT C.

STATE OF NEW JERSEY,

County of Essex, ss:

Frank R. Stone, of lawful age, being duly sworn according to law, doth depose and say:

I am a special agent of the Department of Justice, in direct charge of the investigative forces of said department of the Government in the northern division of the State of New Jersey.

That in the course of my personal investigations and those of the officers and employees within my jurisdiction I am informed and verily believe the following to be true:

1. That Ivan Dudinsky is an alien, subject of Russia.

2. That he is a member of the State (N. J.) executive committee of the Communist Party of America.

3. That the Communist Party of America is an organization which advocates the overthrow by force or violence of the Government of the United States, and that the said Ivan Dudinsky is—

(a) An anarchist; (b) that he believes in, advocates, and teaches the overthrow by force or violence of the Government of the United States; (c) that

he disbelieves in and is opposed to all organized government; (d) that he is a member of and affiliated with an organization that entertains a belief in, teaches, and advocates the overthrow by force or violence of the Government of the United States.

FRANK R. STONE.

Sworn to and subscribed before me this 10th day of December, 1919.

[SEAL.]

SAMUEL B. WATSON,
Notary Public.

EXHIBIT D.

UNITED STATES OF AMERICA,
DEPARTMENT OF LABOR,
Washington.

Warrant—Arrest of alien.
No. 54810/346.

To: The Acting Commissioner of Immigration, Ellis Island, N. Y., or to any immigrant inspector in the service of the United States.

Whereas from evidence submitted to me it appears that the alien Ivan Dudinsky, who landed at an unknown port on or about the 1st day of January, 1919, has been found in the United States in violation of the immigration act of October 16, 1918, for the following among other reasons: That he is a member of or affiliated with an organization that entertains a belief in the overthrow by force or violence of the Government of the United States; that he is a member of or affiliated with an organization that advocates the overthrow by force or violence of all forms of law; that he is a member of or affiliated with an organization that advocates the overthrow by force or violence of the Government of the United States; that he is a member of or affiliated with an organization that teaches the overthrow by force or violence of the Government of the United States; that he is a member of or affiliated with an organization that teaches opposition to all organized government; and that he is a member of or affiliated with an organization that entertains opposition to all organized government. I, John W. Abercrombie, Acting Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law.

The expenses of detention hereunder, if necessary, are authorized, payable from the appropriation "Expenses of regulating immigration, 1920." Pending further proceedings the alien may be released from custody upon furnishing satisfactory bond in the sum of \$10,000.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 29th day of December, 1919.

JOHN W. ABERCROMBIE,
Acting Secretary of Labor.

EXHIBITS E AND F.

An envelope of the Immigration Service at Ellis Island, marked "Exhibits E and F, 98761/899-54810/346."

EXHIBIT G.

Delegate to the Essex County Communist Party, B. Miller, 35 Peshin Avenue, city.

J. DUDINSKY,
113 East Tenth Street, New York City, N. Y.

EXHIBIT H.

[Western Union Telegram.]

CHICAGO, ILL., August 31.

Mr. GAMBRIEL,
50 Hobson Street, Newark.

Kindly inform me if I am elected delegate to convention. Telegraph immediately.

DUCHUSKY,
1221 Blue Island Avenue.

EXHIBIT I.

CHICAGO, ILL., January 2, 1920.

To all branches (locals) of Russian Federation of the Communist Party.

DEAR COMRADES: In view of the raids on the central office of the Communist Party in the city of Chicago, Ill., 1219-1221 Blue Island Avenue, immediately upon receipt of this letter discontinue sending any communication (letters) whatsoever to the above address until further notice.

Also do not pay any attention to the return addresses written on the envelopes and parcels and do not send any communications to those addresses. With comradely greeting,

Yours, for triumph of communism,

RUSSIAN FEDERATION,
Translator-Secretary.

[Stamp of Communist Party of America.]

[Copy of envelope.]

(Stamp.) Chicago, Jan. 3, 1.30 a. m., 1920, Ill. Postage stamp.

Mr. JOHN DUDINSKY,
403 So. 7th St.,
Newark, N. J.

[Reverse side.]

L. A. KAPLAN,
813 S. Marshfield Ave.,
Chicago, Ill.

EXHIBIT J.

Page 54, lines 1 to 5:

Protocol of the united meeting, Russian branches Communist Party, city of Newark, that was held on the 24th of October, 1919, in the presence of the members of the first and second branches. They elected Comrade I. Dudinski the chairman.

EXHIBIT K.

Page 57:

Protocol of the united meeting, Russian branches Communist Party, city of Newark, that was held on the 24th of October, 1919, in the presence of the members of the first and second branches (page 54).

Lines 19 to 24:

Comrade Dudinsky suggests to boycott lectures of that group that leave the Communist Party. He suggests that somebody should be present on the 26th of October at lecture as a correspondent.

MARCH 22, 1920.

For: Commissioner General of Immigration.

From: Assistant Secretary.

Subject: John Dudinsky, or Ivan Dudinsky, No. 54810/346.

This alien appears to have been arrested several days before issue of Secretary's warrant and to have been interrogated by special agents of the Department of Justice without warning that his statements might be used against him, without notification of his right to counsel, and (as alien asserts) under threats of bodily injury.

At his regular examination under the Secretary's warrant, several days after his examination by the special agents of the Department of Justice, the alien refused to answer questions without opportunity to have his counsel present. The legal right to have counsel before his examination proceeded was denied him until after several questions had been propounded and several exhibits put into the record. He finally secured counsel and thereupon, under advice of his counsel, he refused to answer questions on the ground that the whole proceeding was illegal because his arrest, etc., had preceded the Secretary's warrant.

It seems to me that there is enough lawful evidence in the record to make a prima facie case and thereby to put the alien upon his defense, but there is in the record some evidence unlawfully obtained and some which may have been lawfully obtained but is unlawfully in the record as evidence against the alien.

On the whole, from the time of his arrest until the admission of counsel the alien's case was in several respects unfairly tried. Statements of alien, if made under duress, are not valid evidence against him; neither are unsupported statements of other witnesses made upon information and belief. The alien is not obliged to testify in his own case and he is entitled to counsel at every stage.

Open the case for rehearing.

Application for reduction of bail from \$10,000 to \$1,000 may be made at the rehearing at once to the Immigration Office, which is directed, in view of the long period during which alien has been in custody, to expedite such hearing and transmission of the record thereof.

Furnish alien's counsel with a copy of the foregoing memorandum for his information.

LOUIS F. POST, *Assistant Secretary.*

Mr. TINCER. I do not think it is true in the Dudinsky case, because the Secretary did not cancel the warrant in that; it was simply a question whether he would reduce the bond.

Mr. POST. If the gentleman will not prejudice this case, he will get some information. One of my objections and one of my grounds of complaint is the whole matter has been prejudged for newspaper use during the past six weeks. After the attorney's letter, there is a memorandum dated March 30 signed by the Commissioner General; there is a memorandum of my own under date of March 31, with reference to that; there is another letter from the attorney; still another from the attorney, and a memorandum signed by the Commissioner General dated April 10.

The CHAIRMAN. You say the attorney; you mean the Attorney General?

Mr. POST. No; the attorney for the alien. There was one from J. E. Hoover, special assistant to the Attorney General in charge of anarchist cases, as I understand, although that is not stated in it, naturally. That is all the evidence put in with regard to the Dudinsky case. The Dudinsky case at the time one of the witnesses appeared here and denounced the Assistant Secretary before your committee, if the newspaper reports are correct, and I suppose they were, had been decided. There is in the file a memorandum of the

Assistant Secretary, under date of March 22, a statement which shows the status of the case at that time, March 22. It was this:

1. This alien appears to have been arrested several days before issue of Secretary's warrant and to have been interrogated by special agents of the department without warning that his statements might be used against him, without notification of his right to counsel, and (as alien asserts) under threats of bodily injury.

2. At his regular examination under the Secretary's warrant, several days after his examination by the special agent of the Department of Justice, the alien refused to answer questions without opportunity to have his counsel present. The legal right to have counsel before his examination proceeded was denied him until after several questions had been propounded and several exhibits put into the record. He finally secured counsel and thereupon, under advice of his counsel, he refused to answer questions on the ground that the whole proceeding was illegal because his arrest, etc., had preceded the Secretary's warrant.

3. It seems to me that there is enough lawful evidence in the record to make a prima facie case and thereby to put the alien upon his defense, but there is in the record some evidence, unlawfully obtained and some which may have been lawfully obtained but is unlawfully in the record as evidence against the alien.

4. One the whole, from the time of his arrest until the admission of counsel, the alien's case was in several respects unfairly tried. Statements of alien, if made under duress, are not valid evidence against him; neither are unsupported statements of other witnesses made upon information and belief. The alien is not obliged to testify in his own case, and he is entitled to counsel at every stage.

5. Open the case for rehearing.

6. Application for reduction of bail from \$10,000 to \$1,000 may be made at the rehearing or at once to the immigration office, which is directed, in view of the long period during which alien has been in custody, to expedite such hearing and transmission of the record thereof.

7. Furnish alien's counsel with a copy of the foregoing memorandum for his information.

That last clause has been criticized that I was tender to the alien's counsel. I have yet to be informed as to when it is improper, in the progress of a trial involving personal liberty, for the adjudicating officer to confine his decisions, his interlocutory decisions as this one was, to the knowledge of the detectives and of the special counsel and to the Bureau of Immigration. I would have considered myself remiss in my duty if, after making an interlocutory decision like that, I had not required that the counsel be advised of what it was, and the way to advise him was to send a copy of my decision and not to leave it to the man in whose custody he was to determine how much he should know and how much he should not know.

Now, that was the status of this case when the attack was made before your committee by one of the witnesses. I have forgotten his name now, but that occurred on the 1st of May, as I remember it. The reduction of bail has been denounced. Now, I have a certain—prejudice, it may be—prejudice in favor of that clause of the Constitution of the United States which requires that exorbitant bail shall not be demanded, and I happened to know that exorbitant bail was demanded in many of these cases, not for the legitimate purpose of bail, which is to secure the attendance of the accused person when he is needed at the trial or for deportation, but in order to keep him locked up whether he is innocent or guilty. That was the object of this exorbitant bail. I ordered a reduction of that bail to \$1,000, and I justify it, and I am willing to meet any charge of impeachment in this or any other case for having done that.

Now, then, Mr. Chairman, that was the status of the case when that witness came before you. Afterwards the case went to a further hearing under a reopening that I made. The alien appeared with counsel. He refused to answer questions. The case came back to me on the same evidence under which I had reopened it. You will note in my memorandum there, I stated that it seemed to me, slim as the evidence was, there was at least enough to put him to his proofs, and so I reopened it to enable the evidence to be strengthened and to enable him to meet it. He did not meet it, and so on the 30th of April, the day before the witness appeared before you and denounced me, without knowledge on his part, the day before he made that denunciation I had decided this case finally. Of course, he did not know it; I am making no charge against him except the charge of being willing to rush in and testify to matters he knew nothing about. But the day before he came here before your committee this case had been returned and I had made my memorandum of final decision. That I am going to read, and I will furnish the stenographer a copy of it so that it may go into the record. I am going to read it, especially because in this memorandum I state all the evidence there is against the man. I submit it is mighty slim and, if I should be condemned for anything, it should be for deporting a man on evidence so slender as this—and I know the evidence. If I had made this decision after this witness appeared before you it would have been easily charged, as some other charges have been made, that I did that to meet that testimony; but I made the decision the day before and before I knew it existed. This memorandum is dated April 30, 1920, in the case of Dudinsky.

The warrant of arrest was issued upon the affidavit of a special agent of the Department of Justice charging on information and belief—we have been issuing warrants of arrest on information and belief and nothing else, affidavits of information and belief. I think we ought to require more, but it has been considered it would be enough, and there had been a good deal of slackness in the previous method pursued by the immigration bureau in the arrest of people, so we did not draw the line there. If it was on information and belief from an apparently responsible source, we have always issued those warrants, and I am afraid some were issued without it.

This affidavit on information and belief alleges alien's membership in Communist Party, nothing but membership. No other charge was indicated except in a broad, general way; none other proved in any respect. Now, the memorandum goes on:

At the immigration hearing on January 23, 1920, alien refused to answer crucial questions in the absence of counsel. The only evidence then presented in support of alleged cause for deportation—and I ask your especial attention to what this evidence was—the only evidence alleged for deportation was:

1. A typewritten copy, unsigned and in every other respect unproved, of what purports to have been an examination of the alien by the special agent of the Department of Justice while the former was in the latter's custody at the United States attorney's office at Newark, N. J.

Unsigned and unproved and taken when the alien was in a condition of duress.

2. Translation of a letter purporting to have been signed by the alien, but without proof of the correctness of the translation or that the original signature was the signature of this alien.

3. A typewritten copy of the information and belief affidavit on which the warrant of arrest was issued.

Now, down to that, I submit, there is not a particle of evidence against this man. Then comes:

4. Membership cards in alien's name and without proof connecting him with them beyond the inference that might be drawn from their apparent genuineness and their being in his name.

There was a particle of proof; at least, I considered it so.

5. Photostat copy of correspondence in alien's name, but without proof of its genuineness.

There I thought there was a particle of prima facie evidence, because I thought that was enough to put the alien to his proofs, and he had no right to stand mute after that.

6. Typewritten protocols of the Communist Party without proof of genuineness or alien's responsibility for it.

That is the sum total of all the evidence that has been given against this vicious man Dudinsky. He may be vicious for all I know, but there is the only proof there was. Now, the date, I say, of this memorandum is April 30.

On that record the department held—the departmental memorandum of March 12, 1920; that is the one I have already quoted from—that “notwithstanding the weakness of the proof against alien, there seemed to be sufficient legal evidence in the record to put him to his defense. The case was therefore reopened for hearing. At the rehearing alien still refused to answer questions. It is therefore ordered that alien be deported solely as a member of the Communist Party.”

Now, my reason for making that decision was that there were these photostat copies of letters that, on the face of them, purported to be written by the alien. There was a handwriting there, although not proved to be his. And there were membership cards of the Communist Party; that is, they had his name on them; not in his writing; nothing to show they were his. But it seemed to me when those two pieces of evidence were produced alien could not longer stand mute; that there was enough evidence for him to either come forward and say those were not his signatures; those were not his cards; he was not a member of the Communist Party; or, if he stood mute, he must take the consequences. And so as he did stand mute, I ordered his deportation. That, I think, covers the Dudinsky case.

Mr. TINCHER. May I ask what time of day you wrote that opinion?

Mr. POST. I have not acted by the clock; I wrote it on the 30th of April.

Mr. TINCHER. I gave the evidence in the Dudinsky matter before this committee on the morning of the 30th of April, and I want to call the committee's attention to the fact, so that you may ask questions, if you want to, that Dudinsky moved the adoption of the constitution of the Communist Party at Chicago, and was an organizer who traveled about for the Communist Party all over the country. That appears in the record and is in the evidence.

Mr. POST. May I ask the gentleman how he knows that?

Mr. TINCHER. I read the record.

Mr. POST. What evidence did you read?

Mr. TINCHER. It is right in the printed hearing. You are not reading the evidence.

Mr. POST. Was it sworn to?

Mr. TINCHER. Oh, yes.

Mr. POST. Was it sworn to?

Mr. TINCHER. I did not see anybody swear to it; but he did not deny he organized the Communist Party and we have his admission he moved the adoption of the constitution of the Communist Party at the Chicago convention. I could not be there to see that, but I gave my testimony before you rendered that opinion before this committee, your statement notwithstanding.

Mr. RALSTON. You did not hear from me about it until that night?

Mr. POST. No.

Mr. TINCHER. Your attorney was here when I gave the testimony?

Mr. RALSTON. I told Mr. Post of that that evening.

Mr. POST. This was already written the day before that.

Mr. TINCHER. You say I gave my testimony May 1, and I say I gave it on the morning you rendered that decision.

Mr. POST. I suppose these interruptions are all irregular, because this is quite an irregular meeting. I have no objection to it if the chairman and the committee has not, but I wish to say when the gentleman states it was proved this man had done these things, he is doing so on the basis of unproved testimony, namely, certificates unsigned and unproved. I have already recited what there was. I understand this was written the day before it was dated, and that was my custom; but, at any rate, it is dated on the 30th and the testimony was given when?

Mr. TINCHER. On the 30th, in the morning.

Mr. POST. On the 1st of May.

Mr. TINCHER. No, sir. You said on the 1st of May.

Mr. POST. I will take it back if the gentleman, of his own knowledge, says I am mistaken.

Now, here is one piece of evidence, an affidavit by a special agent named Stone, sworn to on information and belief. Of no evidentiary value whatever for any other purpose, at most, than to secure a warrant of arrest; none whatever on the hearing. On that the warrant was issued and that affidavit was put in the evidence. Here are those protocols of the Communist Party that they found somewhere, I do not know where; there is nothing to verify them at all; they are typewritten copies of something that might have emanated from any source. Here is the telegraphic correspondence with his name on it, not proved. Nevertheless, it seemed to me it was up to him not to stand mute when that kind of evidence was in. Here is a card of his membership, with his name on it, not proved to be his in any other way. It seemed to me it could be inferred for the purpose of calling him to his proof that such a document as that should be explained even though it had not been traced to him. Here is a typewritten copy of an affidavit by Stone on information and belief, a typewritten copy of this same original I have already referred to. Here is a memorandum made in typewriting, not sworn to, not proved in any way, that at the meeting of the first branch something or other happened, and that was put in evidence. That, of course, was no testimony at all. It was signed in typewriting by the "Secretary, I. Dudinsky," a bit of typewriting that any typewriter for 15 or 20

cents could have been obtained to make. I do not mean to say that was done; I do not mean to say it is not a correct copy of some official document; but I do mean to say it is not evidence in this case. That was a translation. Even the translation was not proved. And then there is a statement by the immigration inspector; and then there is the testimony in which the man stands mute, the alien does, and no evidence put in against him that is sworn to, except the evidence I have already stated and that is not sworn to, typewritten evidence.

I defy this committee, Mr. Chairman, to find from beginning to end any evidence in that case on which anyone with a conscience could hold this man for deportation except there were the two matters I referred to, the one letter and the membership card, which seemed to me to be enough to put him to his proofs. And when he refused to go to his proofs, then I assumed he was practically pleading guilty.

Mr. TINCHER. I do not like to interrupt, but I want to correct the statement I made a moment ago. I do not want to be unfair. I stated my recollection was I gave my testimony concerning the Dudinsky case on April 30. I gave my testimony concerning the Dudinsky case, as disclosed by the record of this committee, on the morning of April 27, three days before this letter was written. Mr. Ralston was here, the attorney for the witness.

Mr. RALSTON. Mr. Chairman, the gentleman may say that, but I think I may say with equal propriety and with absolute truth that it was not until the evening of a week ago yesterday I told Mr. Post this Dudinsky was one of these men. That is the reason Mr. Post assumed that the statement had been made in the morning.

Mr. POST. I was informed it was made on the 30th. The fact however is this is the evidence on which we had to act and it is very, very slim evidence.

Now, then, to go to another case that has been especially criticized, and that is the Magon case. That begins on page 104 of this printed record and the evidence is given in that case. That is presented by the committee. I will read the parts of that testimony that seem to me to be of importance in this case:

Q. You understand you are under arrest by the United States Immigration Service?—A. Yes.

Q. Do you understand this warrant?—A. Yes; I understand everything.

Q. You are advised that you have the right to be represented by an attorney or counsel at this hearing under this warrant. Do you wish to be represented by counsel?—A. Yes. I would be glad to be represented by counsel.

Q. Who is your counsel?—A. I do not know, but I will have to select them; one of them will be Mr. Clarence Darrow, of Chicago.

Q. Can you arrange for him to be here?

This was in Kansas City.

A. I do not think that he can come here, as he is a very busy man.

Q. Are you now willing to proceed with your hearing under this warrant without being represented by counsel at this time?—A. Yes; with the understanding that I be allowed to reopen the case before the immigration officers.

Q. What do you mean by reopening the case?—A. I mean to go through my representatives and see if it is possible to avoid that I be deported into Mexico. I am not going to fight the case to remain in this country. If they do not want me, I do not want to stay. I do not want to be deported to Mexico.

Q. What is your full name?—A. Enrique Flores Magon.

Q. Are you married?—A. Yes.

Q. What is your wife's name?—A. Mrs. Teresa V. Magon.

I have passed some questions there.

Q. What is your wife's name?—A. Mrs. Teresa V. Magon.

Q. Where does she live?—A. At No. 1120 East Twenty-eighth Street, Los Angeles, Calif.

Q. Have you any children?—A. Six children.

Q. Are they living with your wife?—A. Yes.

Q. What are their names and ages?—A. Esperanya, a girl of 15; Santiago, a boy of 13; Estella, a girl of 11; Pedro, a boy of 9; Jose, a boy of 7; and Enrique, Jr., who is 3 years old.

Q. Where were these children born?—A. The first one in El Paso, Tex., and the rest in Los Angeles.

Then I go over to page 108, which connects it up:

Q. What are the aims and purposes of this paper, the Regeneration?—A. The aims and purposes of this paper are the overthrow of the Government of Mexico in doing justice to the Mexican people.

Q. How is the overthrow to be effected?—A. In Mexico it is impossible to come to the polls, for all officialdom is corrupt; therefore, as there is no freedom at all, we had to resort to revolutionary means by armed force. Now, once a revolution is afloat, we have been teaching to the Mexican people not to lay down the arms until everything that has been taken away from them should fall back into their hands.

Q. This revolution you speak of is to be a forcible one, is it not?—A. It was to get Madero. Madero and myself came together and used our force for the overthrow of Porfirio Diaz.

Q. Your paper, the Regeneration, carried articles along political lines?—A. Along political, economical, and social lines.

Q. In this paper and in other literature that is published by you, or over your signature, you have advocated anarchy?—A. I do.

Q. Do you believe in anarchy?—A. I do.

Q. You are an anarchist—A. I am a communist anarchist.

Q. Give a concise meaning of your word "anarchist."

Now, if he had stopped right there, if nothing further had gone on, he would have brought himself under the one word of the statute, the one word under which Emma Goldman was deported—"anarchist." She said, "I am an anarchist," and made no explanation of what she meant. Probably she could not have made one without elaborating what was stated in the one word "anarchist." The man went further in this case; he did not stop with saying, "I am an anarchist." In answer to the question, "Give a concise meaning of your word, 'anarchist,'" he said this:

By communist anarchism, I believe the theory of having all the natural and social wealth as the property of all. That all may have absolute freedom from the political, social, and economic point of view; so that everybody would be free, equal, and brothers, regardless of sex, race, or color. Therefore, my creed is that of assuring to everybody the right of working and enjoying to the full profit of that labor, and so to insure for everybody the right of living and enjoying life.

Q. Your conception of government is, then, without any political form?—A. It has political form. From the moment you vote, it has political existence. If you want, I will describe my form of government so there will be no mistake. My form of government would be in general lines as follows: Organization of the individuals in their several works—

I suppose that means their places of work, but I do not know—

Organization of the individuals in their several works. From there, in every town; from every town to every region; and from every region, to what we call now national organization to form a kind of republic. When other countries follow suit, then it will be international.

Q. This organization along the lines of work means industrial democracy?—
A. It is not absolutely that; because we would not call an industry an agriculture work.

Q. You would not call agriculture an industry?—A. No; it is simply a course both of them have to go through. Therefore, I say, I do not specify industry; just work—any kind of work it may be.

I notice he is not the only one who distinguishes industry from agriculture. We find the general feeling of the time in industry alludes to factory work, mining work, and so on, and agriculture is outside of it.

Q. The Government would be organized along the different lines of industry?—
A. Every center of human activity will have its own representatives, who will form a kind of Congress. You may call it "soviet" or "municipality," as in Mexico. It is very much like the soviet form of government, though not exactly.

Q. Are you familiar with the manifesto of the third international?—A. To a certain extent. I have not read all of it; only excerpts of it.

Q. Are you in favor of the principles as laid down by the manifesto, as far as you have examined it?—A. I am in favor of having such country to follow the sentiments of the majority of its inhabitants; for instance, I am perfectly sure that among the Mexican people, whose traditions, etc., are much similar to the Russian traditions and customs, I am sure that that in Mexico would be accepted or asked for or advocated by the large majority in a form of government much along the lines of the soviet form of government. Now, in other countries, this form of government could be either accepted or not accepted; therefore, I believe that every country should go according to their own temperament and characterization, etc. It is impossible to give everybody the same brand.

Now, in other parts of this testimony you will find that the Mexican Party, the Mexican liberal organization to which he referred, does not come within the proscription of the act at all. It is for Mexico to use exclusively, the Mexican revolutionists to use, and Mexico alone.

There is testimony explaining what he means when he says I am an anarchist. Now, he either falsified in stating that, or else he was not deportable as an anarchist, because his description of what he believes is not a definition of an anarchist in any definition that is known. Under those circumstances I considered there was at least a question of doubt. I do not think it is doubtful myself on the testimony, but at least it was a question of doubt, and the man to whom that doubt attached had six American children dependent upon him, American citizens, in this country; in addition to that, he had been a refugee, a political refugee, for his life from Mexico; for us to deport him to Mexico under present conditions was to sentence him to death; and, under those circumstances, I gave him the benefit of any doubt there might be as to whether he was an anarchist within the meaning of the law of 1918—I mean to say, I wrote this memorandum, by which I stood then and by which I stand now, under date of April 14:

The alien is married and has six American children living in the United States. He is a native of and a political refugee from Mexico. If deported to that country in its present political condition, he would doubtless be executed for political offenses, as he predicts. For this reason his deportation to Mexico on any ground whatever would be equivalent to a death sentence. It would contravene the long-established American principle regarding political refugees, and would also conflict with the spirit of that expression of those principles which appears in the second proviso of section 3 of the immigration act of 1917. These circumstances, however, do not present themselves for decision unless

the alien comes within the expulsion clauses of the act of 1917 or the supplementary act of 1918.

The warrant of arrest charges the alien broadly with membership in or affiliation with an organization made unlawful by the act of October 16, 1918. To these charges there was added during the hearing—

He was charged with membership alone at first, under the warrant, in the Mexican Liberal Party. Then, during the hearing, after what was said there, he was charged, in addition, with being an alien anarchist. I continue my memorandum:

To these charges there was added during the hearing the charge that the alien is an anarchist, which, if sustained, would in itself bring him within the act of 1917, as well as that of 1918.

The membership charge rests upon alien's admitted connection with the Mexican Liberal Party—an organization supporting political and industrial revolution in Mexico. To sustain this charge under the immigration laws it must appear that the Mexican Liberal Party (1) entertains a belief in, teaches, or advocates the overthrow by force or violence of the Government of the United States, or (2) of all forms of law, or (3) advocates or teaches disbelief in or opposition to all organized government; or (4) advocates the duty, necessity, or propriety of the unlawful assaulting or killing of officers of the Government of the United States, or of any organized government, because of his or their official character; or (5) that advocates or teaches the unlawful destruction of property.

That organization had to come within one or the other of those five classes in order to make him deportable as a member of a proscribed organization.

Mr. GARRETT. Will you permit an inquiry right there?

Mr. POST. Certainly.

Mr. GARRETT. Do you find anything in that testimony that you read—I followed it as closely as I could—after he had declared in so many words that he was a communist-anarchist—do you find anything that negatives the idea, I mean expressly negatives the idea, that he believes in the use of force? He makes positive statements as to what he believes in.

Mr. POST. Yes.

Mr. GARRETT. But is there anything that negatives he believes in the idea of more than what he there gave?

Mr. POST. I will have that part found. I think I read it in one place—not the use of words, not words disclaiming force, but that it was up to every country.

Mr. GARRETT. I will examine the testimony further, of course.

Mr. POST. Then with regard to this membership clause:

It is not shown that the Mexican Liberal Party comes within any of those clauses. This organization appears to be an organization designed to revolutionize political and industrial conditions in Mexico. As such it may be violating American neutrality, as other organizations in this country often do; but it is not chargeable with a crusade against the Government of the United States, or all governments, or the lives of officials, or the existence of property, or all forms of law, or all organized government. Consequently, the charge that the alien is a member of an organization proscribed by the act of October 16, 1918, falls, and to that extent the warrant is canceled.

The only remaining charge is that alien is an anarchist.

In his testimony he calls himself an anarchist. If, then, the word "anarchist" as a mere word, regardless of its meaning or the alien's meaning in using it, is to determine the case, the alien must be deported; for the act of October 16, 1918, requires the deportation of "aliens who are anarchists."

But Congress can not have used the word anarchist as a "verbal brickbat" after one of the verbal fashions of time. It must have meant something by which the word could be expanded into one or more definite significations.

The lawyers of the committee will understand what I mean when I use the term "expanded," namely, that when a statute makes a certain act unlawful, using a word for it, the word in the indictment must be expanded into some statement that will be within the word and yet show with some definiteness that the accused falls within that expansion of the term.

It must have meant something by which the word could be expanded into one or more definite significations. This is all the more certain since the term "anarchism" has long had a well-defined meaning, not only in general political literature, but in standard encyclopedias and dictionaries. It is the name of a movement which originated with Pierre Proudhon about the middle of the last century. Proudhon's anarchism predicated social order upon the self-control of free individuals—

In other words, if individuals were free there would be no disorder. I do not believe that myself and that was Proudhon's sentence.

Proudhon's anarchism predicated social order upon the self-control of free individuals without governmental force.

I suppose we are all anarchists in that sense to a certain extent. I am quite sure I do not have to have any law or police force to prevent my picking anybody's pocket, and I have no doubt that is true of everybody here and true of the vast number of people; it is not the law against larceny that keeps us from stealing. But there are a good many people who do not have that respect for other people's pockets and laws are necessary. That is my view.

Mr. Pou. What do you mean by saying we are all anarchists in this respect?

Mr. Post. That we do not need any law to prevent our violating the rights of others and we do not need a police force for that purpose. Oh, I have no doubt there is a limit; I would not say there is not a point beyond which it would be necessary to prevent me doing injury to others, but I do not need it to prevent my picking pockets.

Mr. Pou. I ask to be excused from being called an anarchist in any sense.

Mr. Post. I excuse you, sir.

Mr. Pou. Thank you.

Mr. Post. I was using the term in the Proudhon sense and not in the sense of those gentlemen who do their debating with epithets instead of arguments.

To continue:

This is all the more certain since the term "anarchism" has long had a well-defined meaning, not only in general political literature but in standard encyclopedias and dictionaries. It is the name of a movement which originated with Pierre Proudhon, about the middle of the last century. Proudhon's anarchism predicated social order upon the self-control of free individuals, without governmental force. He asserted the extreme of an old American doctrine which is not yet forgotten, that "the best government is a government that governs least." Out of Proudhon's anarchistic or non-government philosophy there sprang two principal schools of anarchism, the pacific and the militant, each with a variety of factions. The militant school is terroristic, its slogan "propaganda by deed." Its method and its activities in different parts of the world have doubtless given to the word "anarchism" that sinister significance which attaches to it in its uses as a vulgar epithet. But in the interpretation of a legislative act reasonable construction must be given to this word as to all other words.

And I fall back on the case of the Holy Trinity, which I cited yesterday, the decision of the Supreme Court of the United States, namely, in the interpretation of a legislative act reasonable construction must be given to this word as to all other words.

Giving such a construction to the word "anarchist," as used in the immigration law, its broadest possible meaning would include, on the one hand, disciples of Leo Tolstoi, that famous and beloved advocate of the communistic simplicity of the early Christians, and on the other hand, the advocates of "propaganda by deed," who with pistol, knife, or bomb would assault rulers and property owners. The alien in this case falls within neither category.

He is not a Tolstoi disciple, nor is he an advocate of anarchy by force. He states his belief in the case; and his belief, stated fully in answer to a question, takes him out of the anarchist class.

He describes his ideal of Government as follows—

I will now quote from his testimony again:

"Organization of the individuals in their several works; from there in every town; from every town to every region; and from every region to what we call now national organization to form a kind of republic." He would have "each country follow the sentiments of the majority of its inhabitants." In other words, he favors the American theory of peaceable government by the majority. To deport a believer in a government as an anarchist because he calls himself one would be as absurd as refusing to deport a believer in anarchistic "propaganda by deed" if he called himself a Christian. Although the alien gives to his ideal of government the name of anarchism, his description of his ideal is not anarchistic. He is therefore not under the ban of the act of Congress of October 16, 1918, unless Congress intended to legislate against all forms of government except those that actually exist, including in the latter the most autocratic. This would be inconceivable of an American Congress.

That is my judgment.

The CHAIRMAN. May I call your attention to a statement that is attributed to Magon?

Mr. POST. Certainly.

The CHAIRMAN. That is on page 112, in Exhibit 1, in the hearings of the Immigration Committee:

The liberals wish all to share equally, and that each producer consume, not according to his ability, but according to his needs.

In order to get these conditions the liberals struggle to wrest from the hands of the rich the land, the water, the forests, the mines, the factories, the shops, the railroads, and all other means of transportation, through force of arms, throwing everything into the hands of the poor that they may come to an understanding, and organize the free production and act as overseers for all classes.

Mr. POST. Where do you find that?

The CHAIRMAN. On page 112 of the hearings of the Immigration Committee; it is Exhibit No. 1.

Mr. VAILE. That is the exhibit which you say was not published.

Mr. POST. Exhibit 1? He is talking about Mexico all of that time. That is an exhibit that relates to Mexico, and not to the United States.

Mr. VAILE. He is talking generally.

The CHAIRMAN. He is speaking of his beliefs.

Mr. POST. It is headed, "Organizing body of the Mexican Liberal Party." Now, that was on the principles of the Mexican Liberal Party; yes. It begins by stating that. It has the title "Organizing body of the Mexican Liberal Party," and it begins in this way:

The principles of the Mexican Labor Party—

It says "Mexican Labor Party." That is either a mistake for the Liberal Party or else the two are the same, because he has testified that that is the only party that he belongs to. The exhibit goes on to say:

The principles of the Mexican Labor Party are condensed in a declaration issued by this body under date of September 23, 1911.

And that relates to the revolution in Mexico.

The CHAIRMAN. Do you conceive that it is possible for him to have that kind of belief with respect to Mexico and another kind of belief with respect to the United States?

Mr. POST. I will read the whole declaration if you want me to read it.

The CHAIRMAN. No; I am now asking for your specific judgment as to what this exhibit shows——

Mr. POST (interposing). My judgment is that that declaration does not bring him within the anarchist provisions of the acts of 1917 and 1918.

The CHAIRMAN. You think that he could have one mind with respect to the United States and another mind with respect to conditions in Mexico?

Mr. POST. I did not say that, but that is correct. You have got one mind with respect to the United States and another with regard to other nations, I have no doubt. I suppose we all have.

The CHAIRMAN. I do have. The kind of government that Magon believes in is going on in Mexico; and the kind of government that Magon does not believe in has been established and is maintained in the United States.

Mr. POST. I hold no brief for Mr. Magon. I have no sympathy with his views; I have no sympathy with that idea of government. But I had to decide a question of a man's belief. Now, remember that that statute is not a statute to deport men for overt acts; it is a statute to deport men for certain beliefs; and that is the only claim that can be made here—not against him for overt acts, but against him for entertaining a certain belief, namely the belief in anarchism, whether of the forcible kind or of the peaceable kind—either one would deport him. It is a matter of belief in this case. And I had to decide whether to deport that man for a belief which in his testimony he describes; he calls himself an anarchist and then in his explanation he shows that he does not believe in anarchism in any understood sense of the term.

Mr. HOCH. Mr. Chairman, may I read just a few words on that point? Having presented this case, and having presented the case after having read the whole record, may I read to the committee just two or three other statements regarding this case? Mr. Post has read from what may fairly be said, without any criticism, to be the most favorable sections with reference to Magon's testimony where he further explains his meaning of the word "anarchist." Reading half a dozen lines beyond where Mr. Post stopped reading, on page 109 of the Immigration Committee hearings, we find this testimony:

Q. Your brother was associated with you in the publication of this paper?—A. Yes.

Mr. POST. Whereabouts on page 109 is that?

Mr. HOCH. That is a little above the middle of the page.

Mr. POST. Yes; I see it.

Mr. HOCH. Then it goes on as follows:

Q. Your wife also assisted you?—A. My wife also assisted me.

Q. Their views are with you?—A. Identical to mine, all of them.

Now, turning to page 116, which is also part of the record in this case, the following excerpt is taken from the pamphlet written by this man's brother, Ricardo Flores Magon——

Mr. POST. Where is that?

Mr. HOCH. Right near the top of the page—page 116.

Mr. POST. Yes, I see it.

Mr. HOCH. The whole testimony, if I read it to the committee, will show—I will say this, by way of explanation—the whole testimony will show that he and his brother were associated in the publishing of this paper, and that both of them were convicted. Now, I am reading from this pamphlet by his brother, and he says that his views are the same as his brother's.

Now here is what the pamphlet written by his brother, and published in this country, says:

Brother laborers, be convinced once and for all that humanity is divided into two social classes, that of the workers who produce all useful things and that of the exploiters, who are those declaring themselves owners of the land and all that comes from the hands of the workers. The interests of these two classes are antagonistic; there is no conciliation, because what benefits one of them injures the other, and for this reason there must exist between the two social classes a war to the death, until the exploiting class, capitalists, bourgeois, proprietors, parasites, or whatever name you care to call them, disappears, and together with them will disappear the institution called government, that only exists to help the exploiting class, and the institution church, that has for its object the keeping in submission and obedience of the masses that they may not rebel against the rich and Government.

Now, the circular goes on—it is true that at the end he calls upon his people to rise and join the organizing body of the Liberal Party of Mexico, which he states elsewhere in this record is the only party in the world championing the cause of the poor. But he certainly, it seems to me, expresses some general views with regard to the institution Government and the institution church, all of which are in the same record.

Mr. POST. There is nothing in the immigration law which requires deportation on account of hostility to the church; so that I think I may omit all reference to that remark of the gentleman. I will call the committee's attention to the fact that the gentleman who just spoke read from a document which, if I begin a few words higher up on the page than he began, reads as follows:

The following excerpt is taken from the pamphlet: "*Carranza se Despoja de la Piel de oveja, por Ricardo Flores Magon*" (Carranza stole the Sheep's Hide, by Ricardo Flores Magon).

In other words, the whole thing refers to the Carranza government in Mexico and to the conditions there. And the gentleman has read the end, that referred to the Liberal Party of Mexico. Now, none of that comes within this clause—within this law; and my point about it, at any rate is—

Mr. GARRETT (interposing). But Mr. Post, this man—what is his name?

Mr. POST. Magon.

Mr. GARRETT. Magon—he is not going into the question of his agreement with his brother. Mr. Magon himself had laid down certain principles in a pamphlet touching upon Mexico. But they were general principles. Now, it would not strain the timbers of our imagination in any respect, would it, to assume that he believed in the application of those same principles here that he did in Mexico? On the contrary, is it not a fair assumption that he did believe in the same principles here as he did in Mexico? He said, as I remember, from your reading of it, that in Mexico they could not vote; therefore the only way to enforce the principles in which he believed was by

revolution. He did not anywhere, in the testimony which you read, give the method, as I understand it, through which he would enforce them in the United States. He did lay down principles of organization—

Mr. POST (interposing). Not for the United States.

Mr. GARRETT. Well, I got that impression that he did.

Mr. POST. No; in Mexico.

Mr. GARRETT. I got the impression that he laid down principles of organizing by crafts; I do not know that he used the word "crafts," but organizing by beginning in the factories and running from there to the towns, and then running to entire regions, until it would result in a great national organization.

Mr. POST. That was to be done by vote, he said.

Mr. GARRETT. Well, did he say that?

Mr. POST. Yes; they said to him, "You are not in favor of Government," and he said, "Yes, as soon as they get the vote, we are in favor of government."

Mr. GARRETT. Now, if he did say that, in view of the attitude that he assumed with reference to things in Mexico, is it not a fair assumption, is it not a logical assumption that, if he failed to get it by vote in this country, he believed in using exactly the same methods to obtain it in this country that he believed in applying in Mexico?

Mr. POST. You might make that assumption sitting here. To make that assumption in the case of a man who was a political refugee, who had a family of American children, and who stated what he believed definitely—to make an assumption that he believed something else from what he has stated he does believe; and to draw that assumption from some talk that related to another country, it seems to me would be a very violent assumption in a case involving a man's liberty and his life, as this case did. Yes; as you have quoted that, he said that in Mexico it was impossible to go to the polls and you could not vote there.

Mr. GARRETT. Something of that kind was said.

Mr. POST. Gentlemen, I am very sure that if you read that whole testimony through, you will find that the one thing that determines whether that man held a belief that we do not allow aliens to hold was his statement of the kind of government he does believe in. If that statement is true, we had no right to deport him. If that statement is not true, then we can go into the drawing of assumptions. I was not disposed to doubt that statement, under all the circumstances; and I think everything that has been quoted here this morning against my judgment in the matter goes to confirm the justice and fairness of that judgment, unless people merely want to send aliens out of the country whether they are within the law or not.

The CHAIRMAN. May I ask you what the record shows as to this? I am informed that Magon is now serving a term in the United States penitentiary. Is that correct?

Mr. POST. I do not know whether he is now; he was at the time this examination was made.

The CHAIRMAN. For the violation of the postal laws, or some other penal statute?

Mr. POST. All I know about that is nothing was put in the record, so far as I recall, except a statement of his own that he had been sentenced for sending obscene literature through the mails. Now, I

didn't know anything about that; the obscene literature was the publication "Regeneration," I understand.

The CHAIRMAN. The free love phase of it?

Mr. POST. I do not know whether it was or not. He was either in prison or had been recently released from prison, I do not know which, when this examination was taken.

Mr. HOCH. The hearing was taken in the penitentiary.

Mr. POST. It was taken in the penitentiary, was it? Well, I had that impression, but I was not sure of it.

Now, I will go to the Bosco case, which is another of the cases that has been commented upon.

The Bosco case will be found on pages 87 to 98; it is the case of Paul Bosco. The circumstances of that case are these—I will read only a few extracts.

Bosco appears to have been a socialist—in West Virginia, I think it was—who during the war circulated a hand bill or circular, or some kind of literature, that was found by the courts there to be within the prohibition of the sedition act, or, rather, the espionage act. He was convicted of that, and he made some pretty bad remarks there. He said he hoped when he came out of the penitentiary that he would find the red flag flying above the American flag, and remarks of that kind, which are not very nice at any time, and are worse than not nice in war time. His statement somewhere in the record—I think it will be found there—was to the effect that he had a sense of outrage and announced that; but that he was not an anarchist and was not a socialist. I had nothing to do with that, because there was no question of deportation or cancellation involved in this case; it was simply my action with regard to the disposition of the man's person while he was awaiting deportation. His testimony was taken in the penitentiary to which he had been sent under the espionage act, where he was serving out his term. He had been sentenced for 10 years, and the sentence had been reduced to two years; and this testimony was taken while he was serving out the end of his sentence; this testimony was taken by an examining inspector of the Immigration Service. I do not know why his term was reduced.

And he was asked if he wanted an attorney, and he said that he did not think it was necessary. He was in the penitentiary at the time. And he was held as an alien anarchist. In the testimony he said:

I am not an anarchist. I did not know just what anarchy was until I was accused of it. After I was accused of it I read up and studied on it to find out what anarchy was, and I must say after informing myself I have no objection to anarchists or their principles, as the Constitution of the United States does not forbid anarchistic propaganda or anarchistic doctrines.

Then, in answer to a question, he said, on page 90 of the printed hearings:

I do not believe in the overthrow of law, but whenever laws are against the people I see no reason why the people should not resist their enforcement by force, if it is attempted to enforce the law by force. Whenever Congress passed a law that is contrary to the interests of the people and contrary to the rights guaranteed by the Constitution, then the people are justified in resisting the enforcement of such a law in any way they can—this to uphold their constitutional rights. I think it is the duty of every workingman to take this position.

Further down on the same page he was asked:

Why were you arrested?

And he answered:

I was arrested at Morgantown, W. Va., for distributing leaflets. The subject of the leaflets was The Price We Pay.

And then there were the following questions and answers:

Q. By what organization was this leaflet gotten up?—A. By the Socialist Party.

Q. Did you distribute any of the leaflets?—A. I sold some socialistic propaganda, as we usually do.

Q. What do you mean by we?—A. I mean socialists.

Q. Just what kind of propaganda did you sell?—A. They did not make any charge against me for selling literature. The charge against me was for distributing the leaflet, The Price We Pay, which was an argument against world militarism.

A few lines further down is the following:

Q. When did you first become identified with anarchists?—A. I never was identified with any organization of that kind.

Q. When you were convicted at Parkersburg—for how long were you sentenced?—A. For 10 years.

Q. When your sentence and term in the penitentiary for 10 years was announced in the crowded court at Parkersburg, did you not state defiantly that you hoped that when you were released from the penitentiary that you would find the red flag waving over the American flag?—A. Yes; I said that.

Q. Do you still hope that?—A. Yes.

Q. And you don't call that anarchy?—A. I don't call that anarchy, because the red flag is an international emblem.

Q. You have been living in this country how long?—A. About eight years.

Q. And you think you are better qualified to say what kind of a flag we should have and what kind of laws Congress should make than our best statesmen, who were born in this country?—A. I don't mean especially for this country, but for the world.

Q. Then you claim you are better qualified to say what kind of laws the world should have than our President and our Congressmen?—A. I say this because the Constitution of the United States gives every man of the United States a right to express his opinion; but before I said this I carefully looked over the Constitution of the United States and it does guarantee free speech, free press, and free assemblage.

Q. After being in this country seven years you regard yourself a first-class constitutional lawyer, and presume to know more about the Constitution than our President and our best Congressmen, do you?—A. The Constitution is plain on free speech, free press, and free assemblage.

Q. Don't you think it would be better for a newcomer to this country to leave the interpretation of the Constitution and the laws of the country to properly constituted authority rather than to place your own interpretation on these matters, at least until you become a citizen of the United States?—A. I think the Constitution guarantees freedom for foreign people the same as for United States citizens, therefore I try to exercise my privilege.

Now, he was found to be within the proscription of the law against anarchists; that he came within that general description. And the memorandum directed the proper person in charge in the administration of his case—this is the language, on page 93:

The bureau transmits herewith for your information copy of a formal warrant of deportation issued to-day for Paul Bosco.

The warrant of deportation had been issued. The warrant had been issued by the solicitor of the department as Acting Secretary.

This alien is confined in the Federal penitentiary at Atlanta, Ga., but will be released from custody in about three weeks, at which time he will be delivered at your station by an officer detailed by the inspector in charge at Jacksonville for detention after his deportation can be effected.

The expenses incident to such detention, including the expenses of delivering the alien at Ellis Island, New York Harbor, for deportation, as well as those of an attendant who will accompany him, if necessary, are authorized, payable from the appropriation "Expenses of regulating immigration, 1920."

This is a memorandum addressed to the Commissioner of Immigration at Ellis Island last July, stating the case, and winding up in these terms—this is on page 93:

You are directed to purchase transportation from New York—

He was at that time either in the penitentiary or at New Orleans awaiting deportation to New York—

You are directed to purchase transportation from New York to such point in Russia as you may designate at the lowest available rate, payable from the above-named appropriation. For so doing, this shall be your sufficient warrant.

That is dated the 24th of July, 1919. And I want to call the attention of the committee to the fact that the order to take that man from New Orleans to New York for deportation had been made as long ago as last July, had never been revoked, and there could be no very legitimate reason for revoking it, because New York is the only port from which we can have any reasonable expectation of deporting aliens to Russia. They must be brought to New York from any point; as far as we can now see ahead, that is the only possibility of deporting them to Russia. So that this man was all ready to be brought to New York for deportation to Russia before the case came to me in any form.

It did come to me in the form of an application from a New York lawyer asking to have the case reopened for a hearing, and to have the man admitted to bail pending that hearing. The bail was \$10,000, which was for the purpose of keeping him continually in prison until he could be deported, at the expense of the United States; in prison and at his own suffering, for something that is said not to be a crime and in respect to which he can not have the full protection of the criminal law for the protection of persons charged with offenses. The matter came to me on a request for reopening the case and allowing him reasonable bail in New York. That I did, and that I stand prepared to support, namely: Here was a man that was to be deported to Russia. He had to be brought to New York in order to be deported to Russia; he had already been ordered to be brought to New York in order to be deported to Russia; he had had his hearing before the immigrant inspector in the penitentiary while he was a prisoner there; he said he did not want counsel. I have never yet got into the penitentiary, and I do not know how it feels to be there. But I have a little imagination, and I can imagine that a man with that kind of a temper would not care what happened to him.

Now, he was convicted, without any representation by friends or counsel, upon his statement on these matters. He had had no hearing or counsel of any kind before the Secretary, or anybody else. And a counsel asked in his behalf that he might have a hearing.

Now, this was the problem that presented itself to me: If that man is within the proscription of the law he must be deported. In order to be deported he must be brought to New York; he ought to have been taken there long ago, according to the record. While in New York he could have the benefit of counsel, which he did not feel that he could have in the penitentiary, unless he could find some lawyers already in there with him as inmates of the penitentiary; he did not have any real chance to get lawyers.

Being in New York, why should not the case be reopened? He might be proved not to be guilty. That is a chance that has to be

taken whenever a case is reopened. And nobody can fairly object to that, unless he wants men deported whether they are guilty or not.

And so I concluded that that case should be reopened so that he could have a hearing. No harm could come from that. If he was within the law he could be deported just the same; and at any rate, he would take back to the country to which he was deported, if he was deported, the report that he had had fair treatment under the American law—or at any rate, under the deportation law.

And so I reopened the case, for him to have a rehearing and the benefit of counsel; and, of course, all of this evidence would go into it and have its weight.

Then the other question involved in the case was, should he be locked up in Ellis Island during all the time we were waiting for the disposition of his case? I can not recall the date that I made that order; I think it was about March 2. At that time there was not any possibility of getting anybody sent into Russia; it may not be possible to do so now. At that time no one could tell when we would be able to get him sent there.

Should I have kept that man in jail all of that time? Undoubtedly that would have been highly pleasing to the detectives, and to some others, no doubt. But that is not an American procedure, in my judgment. That man was entitled to an opportunity to be free until he could be deported; and in order to enable him to have an opportunity to be free, bail had to be fixed at a reasonable amount; fixing bail at \$10,000 meant that he would remain in prison; fixing it at \$1,000 meant all the security that we needed, just to get that man to attend the hearing of his case, and to be present for deportation when we had the opportunity to deport him, instead of being kept locked up at our own expense and at the expense of the personal liberty features of our Constitution. That, I think, is about all that is involved in that case.

On that question of bail, I should like to put into the record, Mr. Chairman—it may not be necessary, but it will make the record more consecutive—the eighth amendment to the Constitution of the United States:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Excessive bail is a part by itself. I have put the whole article 8 into the record, the whole eighth amendment, and lay stress upon the first clause; and when I have finished, which will be very soon now, I shall take occasion to satisfy the committee, I think, that that provision regarding excessive bail applies as well to immigration cases as it does to criminal proceedings:

Now, my contention there is that the object of this law is to be fair, and the object of referring to the Secretary is to promote fairness in procedure.

Now, Mr. Chairman, I will go to page 66 of the printed document; that is, that clause in this most interesting report that the Committee on Immigration has put in here as evidence for impeachment proceedings. It is the clause that reads, as one of the charges against me, that I used the phrase, "Let the court decide."

Here was a man who had been arrested upon a warrant, charged with being within the expulsion law—within these acts of 1917 and

1918. The Commissioner General had recommended that he be deported, in that form that we have already discussed—I will not discuss it again—where the Commissioner General makes a recommendation and adds the word “Approved,” and the Secretary or Assistant Secretary or Acting Secretary would sign it to make it valid. In one of those memorandums the Commissioner General recommended deportation, and the solicitor, acting as Secretary, approved the recommendation.

Whereupon a writ of habeas corpus was sued out before the Federal court in New York, and the judge sitting—Judge Knox, it was—made a review of the case, quite an extensive review, and came to the conclusion, which he did not pronounce, however, that the writ should be sustained; in other words, that we had ordered a man deported whom under the law we had no right to deport; that we were absolutely without jurisdiction in the case. That was what he was disposed to say.

Then there came in consequence of that a letter, which will be found on page 65, signed, “W. J. P.”—“W. J. P.” means Mr. Peters, who is a very good lawyer, a very fine man, a man of ability, a man whose judgment, left free from influence, I would be glad to take in these cases where I could not make the examination thoroughly myself—a conscientious and industrious man; and as I say, if his memorandum was made in absolute freedom, I should not hesitate to take it. Mr. Peters, being in New York, representing the department—he is an officer in the Immigration Service—representing the department in this habeas corpus case, wrote this:

I learned while in New York that the United States attorney’s office was very much adverse to making any further contest of this case before the district court, where it is now pending.

Then he goes on to explain what the principal point involved is, and winds up by saying:

I am of the opinion that a memorandum should be prepared for the approval of the Assistant Secretary recommending cancellation of the proceedings against this alien.

It had reached the point where the court had practically given notice, “I will not hold this alien, I will sustain the writ of habeas corpus”; and then Mr. Peters very properly suggested, rather than have an adverse precedent, that perhaps we had better cancel the warrant.

That was sent to me by the Commissioner General on April 2, with a memorandum in which he said:

It is understood that a decision will be rendered some time to-morrow forenoon, in the event the department does not reverse its ruling and order the outstanding warrant canceled.

So he recommended cancellation, and the word “cancel” was put there at the bottom of his memorandum. It is copied here [indicating], so that this is rather misleading; that, of course, was a typographical error; it was not intentional on the part of the Committee on Immigration; but the word “cancel” was there, and so the printer set it up. But that was not the decision at all; the decision was, omitting the word “cancel,” “let the court decide.”

And so I am charged with being keen to let people off until a case comes up where the judge told me he was going to let the man off,

and then I refused to cancel the warrant so as to compel him to make the decision.

I will say very frankly that that was my reason. And I will tell the committee why I had that reason:

Some time ago a cargo of men ordered to be deported abroad, was brought on from the Pacific coast to Ellis Island. The chairman of the Immigration Committee has referred to that before this committee—he did yesterday—to the fact, as he stated it, and as it has been stated by others, that when these condemned anarchists or reds, or I. W. W.'s, or whatever they were, were brought to New York, to Ellis Island, the Department of Labor released a large number on their own recognizance, and thereby turned a lot of criminals loose in the city of New York who had been imported from Seattle, and other places perhaps on the Pacific coast. And that was used by the newspapers, and it was not minimized by the committee that was charged with investigating these things; but the Department of Labor was held responsible for having released these guilty men on their own recognizance—turned them loose in New York, though they had been convicted.

The fact in that case—I did not learn it until afterwards, but I knew it when I signed this order to “let the court decide”—the fact in this case was that habeas corpus writs had been procured in New York before a Federal judge, and the Federal judge called in the assistant district attorney and the representative of the Department of Labor, and he said to them, “I can not but sustain these writs. If you do not cancel these proceedings, or if you do not do something to let these men free, I shall have to let them free.” And the assistant district attorney, or at any rate, the representative of the Department of Labor, communicated with the bureau, and through the bureau, with the Department of Labor, asking that, in order that the judge might not set a precedent by discharging these men on habeas corpus, we should release them on their own recognizance. The department released them on their own recognizance, and they became, a few months later, a butt for the attacks of these men who now denounce me for having refused to cancel a warrant under those circumstances.

I said, in effect, “We have had one experience with canceling warrants where the court has intimated that he will sustain the warrants. This time, let the court decide. We have carried the bag once; we will not carry the same bag with the same cargo again.” And that is the reason I decided that case in the way I did—“Let the court decide”; and the court did decide. He ruled that our warrant was utterly without jurisdiction, and absolutely released the man—which would have been done in the other cases, about a year ago I think it was, when that great exploitation regarding them was made.

Mr. JOHNSON of South Dakota. Will you permit an interruption at this point?

Mr. POST. Certainly.

Mr. JOHNSON of South Dakota. Would you give the names of the witnesses who could show the conversations and trace these circumstances, so that we can get all the evidence before the committee?

Mr. POST. Which conversations do you mean?

Mr. JOHNSON of South Dakota. That led up to those releases through the request of the judge coming down to you.

Mr. POST. Of those people from Seattle?

Mr. JOHNSON of South Dakota. Yes; those people from Seattle.

Mr. POST. I can give you the name of the man—he is no longer in the department—a perfectly reliable man; and if he says I am wrong about it, I will yield myself to what he says. I do not know the facts myself; I was not there. But I do know that the thing was done. His name is Parker—what is his first name?

Mr. JOHNSON of Washington. A. W. Parker.

Mr. POST. A. W. Parker—if you will get A. W. Parker; whatever he tells you will be right, because he was there representing the department. And I say in advance if Mr. Parker contradicts me in any respect in those particulars, I ask leave to withdraw the statement that I am making now to that extent. Mr. Parker knew about it, and he is the only man that I know of that did distinctly know about it, representing our department.

The CHAIRMAN. Whom did he represent? What was his position?

Mr. POST. He was at that time an immigrant inspector in the Immigration Service, detailed—

Mr. RALSTON (interposing). He was a law examiner.

Mr. POST. No; there is no such office; he was a man who was detailed as a lawyer; he was a lawyer and a very good one.

Mr. VAILE. He was counsel for the Bureau of Immigration, was he not?

Mr. POST. No; there is no such position. He was one of the law officers of the Bureau of Immigration. The law officers of the Bureau of Immigration—so far as I know, there is no legal authority for such an office, but for convenience immigrant inspectors are detailed to that service when they are competent for it. Mr. Peters holds that position now.

Mr. VAILE. Well, no matter what his title was, he was acting as counsel in these cases?

Mr. POST. Yes; he was representing the department in these hearings; the writs of habeas corpus were sent there, and he was acting as lawyer for the department; he had the authority of the department in the matter.

Mr. GARRETT. May I ask you a question at this point, Mr. Post?

Mr. POST. All right.

Mr. GARRETT. I have not been familiar with the proceedings that you have related heretofore. It seems that this deportation matter, then, did go into the courts?

Mr. POST. It did go into the courts.

Mr. GARRETT. I mean the deportation question?

Mr. POST. Oh, it has been in the courts again and again.

Mr. GARRETT. Was the attitude of the judge there predicated upon the warrant?

Mr. POST. It was predicated upon the whole record. They call for the record and we send the record to the court on a requisition.

Mr. GARRETT. Well, I have been proceeding upon the theory that you were claiming that this was an administrative proposition; I have been proceeding upon the theory that this was an administrative proposition.

Mr. POST. It is an executive proposition; quasi judicial powers the Secretary has.

Mr. GARRETT. Yes; and not judicial; and I was just wondering how it did get into the courts.

Mr. POST. I can explain that, I think, on the theory that the Secretary, in deciding where there was no evidence, was without jurisdiction; and it was the theory of want of jurisdiction, on account of lack of evidence—not lack of evidence, that does not express it—absence of evidence, or unfairness in the bearing, or something of that kind, that the court would take jurisdiction under writs of habeas corpus, and if they find—they issue the writs of habeas corpus as a matter of course; and they requisition the records; and when the records get before them sometimes they will take further hearings; they have done that. I think this judge did that, but I am not sure. Then they decide whether to sustain or to dismiss the writ, and if they find that the Secretary had jurisdiction in the case, that is, if there was any evidence justifying his decision and the trial was a fair one, they dismiss the writ. But if the trial was not a fair one, or if there was an absence of any evidence giving jurisdiction, then they sustain the writ.

That is the practice as it has been for years. The courts have taken the ground that they would not issue a writ until the Secretary had acted; they will not issue a writ against the bureau; they will not issue a writ against the Immigration Service; they will not issue a writ until the Secretary of Labor has decided the case. And then they hold that his exercise of that jurisdiction is conclusive, so far as the administrative process is concerned; and if there is any evidence to justify it, they dismiss the writ, and if not, or they find that the trial was an unfair one, they sustain the writ.

Now, my only reason for bringing that up is to explain why I said here [indicating], "Let the court decide." Mr. Abercrombie had already decided the case for the Secretary, he acting as the Secretary at the time. I was not going to interfere with that action unless there was strong reason for it. If that precedent had not occurred last summer, I should very likely have canceled the warrant under those circumstances. But it had occurred, and I did not propose that any such thing should occur again, because I was perfectly aware that the Department of Labor is under fire, is under a cross fire from two sides—well, more than two sides—and I thought I would just stand neutral on that point, and I did. I said I would let the court decide, and the court did decide.

Now, Mr. Chairman, there is one other file that it seems to me necessary to call attention to. It is referred to on page 59 of the printed document and is headed "Cancellation of 38 cases by telegraph." This seems to be a pretty serious accusation. And I will confess that, handling some 1,500 or 2,000 of these cases, when I read that I wondered if I had not been asleep when I gave the order. I will read you just what is in this printed document that is put before you as evidence, on page 59, under the heading "Cancellation of 38 cases by telegraph." I want to be as fair as the gentleman who spoke here a while ago, and I will say that instead of 38 cases

it was somewhere in the forties, at least. Then the sergeant at arms of the subcommittee of the Committee on Immigration writes:

What is not so clear, however, is how the Assistant Secretary, or any other person having the interests of the United States Government at heart, could issue an order by wire canceling the warrants in the cases of 38 aliens arrested as anarchists without awaiting the record of hearing in order to determine the nature of the evidence adduced to support the original charge. A list of the cases in question, identified by the file numbers of the Bureau of Immigration, follows:

And then he gives the file numbers of all those cases, on page 59. I think I had better insert the whole of them; I will not read them, to bore you with figures; but I think the stenographer had better insert them in the record.

(The list referred to is as follows:)

Cases in which the Assistant Secretary ordered warrants canceled by wire before record of hearings had been received and, in some instances, before hearings had been given: 54809/316, 54809/321, 54809/348, 54809/359, 54809/361, 54809/621, 54809/795, 54809/802, 54809/776, 54809/784, 54859/353, 54859/87, 54859/101, 54859/351, 54859/870, 54859/839, 54859/861, 54859/876, 54859/375, 54859/837, 54859/836, 54859/112, 54859/108, 54859/33, 54860/71, 54860/949, 54860/844, 54860/868, 54860/864, 54860/849, 54860/979, 54860/870, 54860/886, 54860/615, 54810/121, 54811/784, 54811/791, and 54860/973 (this case was the subject of a separate comment above).

That is all there is on this subject.

Well, I repeat I was startled when I read that. I had no recollection of ever canceling warrants by wire before there had been hearings. I did not scrutinize this language as carefully as I have done since. I now find that it states that I issued—

an order by wire canceling the warrants in the cases of 38 aliens arrested as anarchists, without awaiting the record of hearing in order to determine the nature of the evidence.

When I first read that, I thought that it meant, and I venture to say that nearly everybody who reads it will think it meant that, without any hearing at all, I canceled those warrants. It was very well done, showing that the writer who did it knew exactly what the facts were and provided against what I am now going to show you.

He said that I canceled by wire without awaiting the record. That is the substance of what he said; whereas the impression is, "without there being any record."

Now, here is the key file. It is file 54809/776 in that list, the Finster case. When I say the "key file," I mean by that that all of this was done, so far as the record is concerned, on one file; the correspondence is on one file, relating to all of the cases; and so I produce the key file. I have not produced any of the others, though they can be produced if desired, and will be produced if desired.

Now, I find in this case—I think I had better let you have what the sergeant at arms did not let you have—just what happened:

In the first place, I have the usual affidavit here [indicating], sworn to by a special agent of the Department of Justice, on information and belief. He bases his information and belief upon this statement, which is the usual one:

I am a special agent of the Department of Justice attached to the investigative forces of the Bureau of Investigation of said department in the district of Massachusetts.

That in the course of my personal investigations, I am informed and verily believe the following facts to be true.

Then he states the facts that he is informed and verily believes to be true.

That was sworn to on the 13th of December, in this case of John Finster, which is the case the number of which I have just given, file number 54809/776.

The next paper in this record of Finster—and doubtless it is the same in all the other cases—I have not examined them, because that does not seem to be necessary—is a copy of the warrant, addressed “To H. J. Skeffington, commissioner of immigration, Boston, Mass., or to any immigrant inspector in the United States,” and dated the 29th of December, 1919, some two weeks or more after the affidavit on information and belief; and that warrant, as all warrants do, states what the man is charged with, and directs the commissioner of immigration, or any immigrant inspector—nobody else—the commissioner of immigration or any immigrant inspector—it commands him, not directs him, but it commands him; this is the language:

To take into custody the said alien, and grant him a hearing to enable him to show cause why he should not be deported, in conformity with law.

That is the usual warrant. Now, that had gone out, signed by the Acting Secretary, before I took hold of these matters, upon his going away.

Then there is a telegram dated the 2d of March. I wish to call attention to that—dated the 2d of March. This warrant was issued in December. On the 2d of March there is a telegram signed “Skeffington”; that is the name of the immigration commissioner at Boston. This telegram reads—I will translate the code words instead of quoting the code words, for obvious reasons:

Request authority to release, on his own recognizance, alleged communists—

And then it names them, including John Finster, which is the key file. It names all of them; they are the 38, which I think runs more into the forties.

The next paper is a telegram sent by the Commissioner General of Immigration, to whom Mr. Skeffington's telegram was addressed, under date of March 5, three days after the date of Mr. Skeffington's telegram. I can not read the date of the receipt of that telegram. But this telegram of Mr. Caminetti is dated Immigration Service, Boston, Mass., March 5, and appears to have been sent on that date:

Replying your wire—

Meaning the 2d of March telegram—

regarding John Finster and 48 others, bureau desires reasons for requesting their release on their own recognizance.

I am still translating the code words and not giving the code words.

No records found here of some of those men.

And it names some. Then it asks for a wire in explanation. Then comes the wire of March 8 to the commissioner general from the board in Boston, signed by Sullivan; he is the deputy commissioner:

Bureau wire 5th—

Meaning the 5th of March—

John Finster and 48 other alleged communists, reason requesting release on their parole in these cases is that examining inspector and agent Department of Justice satisfied warrants should be canceled.

That is an abbreviated telegram. I think I will read it as it would read if written out:

Bureau wire of the 5th in the case of John Finster and 48 other alleged communists. The reason for requesting their release on their own recognizance is that the examining inspector—

the only person authorized, by the way, to conduct these examinations—

and the agent of the Department of Justice are satisfied that the warrants should be canceled.

Now, observe that they were satisfied that the warrants should be canceled. Presumably, they had taken evidence. The record showed that they had taken evidence, for the evidence was furnished in the record weeks after this telegraphic correspondence, and is here now. Then there came from the bureau, prepared for my signature, a telegram which read as follows: I will again translate the code words; this telegram is to the service at Boston.

Your telegrams March 2 and 8. Release on their own recognizance all aliens concerned.

That was prepared for my signature by the Bureau of Immigration. I struck out the code word for "release on their own recognizance" and inserted the code word for "cancel" in that telegram.

I did not see then, and I do not see now, why men should be released on their own recognizance who had been brought before the commissioner at Boston, the examining officer, and against whom no evidence had been produced, and with reference to whom both the examining officer and the representative of the Department of Justice were of the opinion that the warrants should be canceled. That was the word that came at first; and I was asked to release them on their own recognizance—I mean that was the word that came at one time; perhaps I had better explain that: The telegram from Boston was using the code word for "release on their own recognizance"; the statement in behalf of the examining inspector and of the representative of the Attorney General was that both were satisfied that the warrants should be canceled. And under those circumstances I was satisfied that the warrant should be canceled, and I directed that it be canceled.

Now, we have the record from which it appears that the hearings in those cases, or in the Finster case, at least (and the others were doubtless along about the same time), took place on January 23, before the examining inspector. Here is the testimony [indicating] and I will offer this testimony in evidence, Mr. Chairman. I will furnish a copy of it, as it afterwards came to the department.

(The testimony referred to is as follows:)

DEPARTMENT OF LABOR,
IMMIGRATION SERVICE,
Boston, Mass., March 25, 1920.

COMMISSIONER GENERAL OF IMMIGRATION,
Washington, D. C.

The inclosed record of hearing by Inspector Hagberg, of this station, with accompanying exhibits and brief of Attorneys Callahan, Lynch, and Lacey, relates to the case of the alien John Finster, for whose arrest departmental warrant No. 54809/776 was issued December 29, 1919.

Inclosed herewith is letter from the division superintendent of the Department of Justice stating that they have no further evidence to offer in this case.

From the evidence adduced at the hearing, it appears to me that the charges contained in the warrant are not sustained, and therefore I recommend that the warrant of arrest be canceled and the alien be permitted to remain in the United States.

The alien has been released on bond.

JAMES A. SULLIVAN, *Acting Commissioner.*

Family here.

Note bureau telegram of March 12.

No action taken hereon owing to cancellation of March 12, 1920. 'C.

Memorandum to Commissioner General of Immigration, Washington, D. C.

Case of John Finster.

Age 33; married; two children and wife living with him at 293 Park Street, Holyoke, Mass.; landed at port of New York, Steamship *Zealand*; has taken no steps to become a citizen of the United States; citizen and native of Grzynalow, Galicia, Poland.

As no evidence has been produced or offered or brought out in hearing that this alien is, or has been, affiliated with the Communist Party or with any organization that believes in the overthrow by force or violence of the Government of the United States or other Governments, I have recommended cancellation of warrant.

Appeal of alien accompanies my report.

No further evidence offered by the Department of Justice.

JOHN G. HAGBERG,
Immigrant Inspector.

REPORT OF HEARING BY IMMIGRATION SERVICE, DEPARTMENT OF LABOR, IN THE CASE OF JOHN FINSTER, UNDER DEPARTMENT WARRANT NO. 54809/776, DATED DECEMBER 29, 1919.

Hearing conducted by Inspector Hagberg, at Deer Island, January 23, 1920.

Alien taken into custody at Holyoke, Mass. (9 p. m. Jan. 2, 1920), by Inspector William Burke and released upon his own recognizance.

Minutes taken and transcribed by Ellis M. Denny.

Said John Finster, not being able to speak and understand the English language satisfactorily, an interpreter, named Harvey Kartum, competent in the Russian language, was employed after being duly sworn.

Said John Finster was informed that the purpose of said hearing was to afford him an opportunity to show cause why he should not be deported to the country whence he came, said warrant of arrest being read and each and every allegation therein contained carefully explained to him. Said alien was offered an opportunity to inspect the warrant of arrest and the evidence upon which it was issued, which privilege was accepted.

The alien being first duly sworn, the following evidence was presented:

By the INSPECTOR:

Q. What is your name?—A. John Finster.

Q. How old are you?—A. Thirty-three.

Q. Married?—A. Yes, sir.

Q. How many children have you?—A. Two.

Q. Where are they?—A. No. 359 Park Street, Holyoke, Mass.

Q. Is your wife there too?—A. Yes, sir.

Q. What is your wife's name?—A. Antonina.

Q. What was her family name?—A. Zatonska.

Q. Where were you born?—A. In Grzynalow, Galicia, Poland.

Q. When were you born?—A. I don't remember the day, but it was in September, 1886.

Q. Where did you land?—A. New York.

Q. When?—A. June, 1897.

Q. What ship?—A. *Zealand*.

Q. Have you taken any steps to become a citizen of the United States?—A. When I came to the United States I couldn't read nor write so I took lessons in English the last two years to understand and the 5th of January this year I would be ready for first papers.

Q. Where are you working?—A. Germania Mills.

- Q. How long have you worked there?—A. The last time, for three years.
- Q. What did you do there?—A. Weaver.
- Q. How much a week did you make?—A. From the 1st of December, 1919, I can earn \$34 to \$43 a week.
- Q. Ever arrested?—A. Never.
- Q. Were you ever a member of the Socialist Party?—A. Never.
- Q. Of the I. W. W.?—A. I have been a member since the end of 1916 up to 1917.
- Q. Where?—A. Holyoke.
- Q. Why did you join the I. W. W.?—A. I joined for the union and as a benefit society.
- Q. Are you a member of the I. W. W.?—A. No.
- Q. Have you or are you a member of the Communist Party?—A. I never heard about that word. The first time I heard from this gentleman [indicating special agent Dowd].
- Q. Are you very sure that you are not still a member of the I. W. W.?—A. Yes, sir. I can swear that in 1917 I left it.
- Q. What did you do to leave it?—A. I found out the first thing in the Courier, the daily news from Boston, that the I. W. W. have some kind of trouble in some city with the United States Government and I heard that and I told the other members I don't want to have anything to do with this any more and four of us left it right away.
- Q. What were the names of the other fellows?—A. Klowan, Paluk (two brothers), and myself.
- Q. How much money did you pay to the I. W. W.?—A. Twenty-five cents a month.
- Q. Did you read the papers?—A. No; I don't read any I. W. W. papers. When I first joined the organization the most I had was three, a paper in Polish, Solidarity.
- Q. Did you read any other papers in Polish?—A. No; only the Courier Codsienby from Boston.
- Q. Have you been to any meetings lately?—A. They were supposed to have a meeting but I wasn't there.
- Q. When were you at the last meeting, any time, anywhere?—A. The last meeting I was at was in 1917.
- Q. Have you been at any meeting of the Socialist, I. W. W., Communist, or anarchistic, since then?—A. No.
- Q. Do you belong to any other society?—A. I belong to the benefit society of Polish Workers Sick Mutual Association.
- Q. Do you own any house or land?—A. No.
- Q. Have you any money in the bank?—A. Yes; I have for my name \$200 and \$100 for each kid, and three \$50 Liberty bonds all paid up.
- Q. Who asked you to join the I. W. W.?—A. The first man asked me was Unger.
- Q. Who was the next man?—A. Nobody else.
- Q. Do you know W. J. Borowski?—A. Yes; for a long time.
- Q. Did he ask you to join the I. W. W.?—A. No; he talked to me and he was in the I. W. W., and he asked me to join, but I didn't join. When I came from Canada, he had trouble with my wife, and I haven't spoken to him since.
- Q. When were you in Canada?—A. 1913.
- Q. How long did you stay?—A. Eight months.
- Q. What did you do there?—A. I worked. My brother-in-law and sister lived there, and they had a farm, and I found them in the farm, and I didn't like that kind of a life, and I went to the city and did any work I could find to pay my expenses, so I could come back again.
- Q. Where did you come back from Canada into the United States?—A. Portal, N. Dak.
- Q. What date?—A. I came in November, 1913. Left Holyoke in March and came back in December.
- Q. I here introduce as evidence in your case and make same part of record marked "Exhibit 1," Affidavit and questionnaire of the Department of Justice. I here introduce as evidence in your case and make same part of record marked "Exhibit 2," same being official ballot of the Industrial Workers of the World, dated May 5, 1919, on which a cross or mark appears after the name "K. L. Webert." This was found in your home. Is this your property?—A. I don't know nothing about it.
- Q. Did you hold any office in the I. W. W.?—A. No.
- Q. (Warrant read and explained.) Do you understand the reading of the warrant?—A. Yes.
- Q. Do you suppose you could secure a bail of \$1,000?—A. I don't think I could.
- Q. Do you want to be represented by counsel at this hearing?—A. I don't know. I think possibly my wife has got counsel.

(Counsel for the alien, Eugene Lynch, Holyoke, Mass.)

Q. If you were allowed to go to Holyoke, could we find you there at any time in the near future if we wanted to talk with you some more?—A. I will go back to Holyoke to my work. I have there my family, wife and children, and have to stay there on account of my patent, until I hear from that, and my interests are all there. I will be there any time you want me.

Description of alien: 5 feet 8 inches, brown hair, gray eyes, medium complexion, weight 160 pounds.

I recommend release of this alien upon his own cognizance believing that he can be found at any time when wanted, in Holyoke and that there is not sufficient evidence at this time to hold him. The alien does not know at present if his wife has secured counsel for him or not, which I expect we will hear later on if she has.

Immigration Inspector.

Attorney Lynch has noted his appearance in this case; does not wish to question alien and will file brief.

STATE OF MASSACHUSETTS,
County of Suffolk, ss:

Personally appeared before me this day the above-named John A. Dowd, who, being duly sworn according to law, acknowledges this signature to be his and states that the answers set forth above are true and were made by the person named.

Dated at Boston, Mass., this 9th day of January, 1920.

F. E. SHEEHY, Notary Public.

Name: John Finster. Age: 33. Married: Yes.

Address: 359 Street Park, Holyoke, Mass.

Where born: Grynalow, Poland, September, 1886.

Arrival in United States: New York, July 18, 1907, steamship *Zealand*.

Naturalized? No.

Declarant? No.

Where employed: Holyoke, Mass., Germania Mills, South Street.

Ever arrested? No.

Are you a member of the Communist Party? Yes (I. W. W.).

If so, to what local, branch, or organization? Branch 205, now branch 1000.

When did you become a member? 1916. Have you a membership card? No; destroyed it.

Do you hold any office in the Communist Party? No. Office? No.

Do you contribute financially to support of the party? Yes, pay dues, contribute to speakers' fund, subscribe to papers.

Do you attend membership meetings of the party? Yes.

Do you read its papers and publications? Yes. If so, which? Solidarity, Karyer Codsienry.

Are you affiliated with any other organization? No.

Were you a member of the Socialist Party? No.

I, the undersigned, not a citizen of the United States, on oath depose and say that I have read the above questions and answers, or have had the same read and interpreted to me, and state the same are true.

JOHN FINSTER.

Above questions and answers noted by John A. Dowd, Edward J. Sullivan.

Report made by John A. Dowd, Boston, Mass., January 8, 1920, for period of January 3, 1920.

Title of case and offense charged or nature of matter under investigation: John Finster, communist, at Holyoke, Mass.

John Finster was examined by me to-night at the police station in Holyoke, Mass., and I procured the following information in the form of a questionnaire which was signed in the presence of Special Agent John A. Dowd, of the Department of Justice, and Edward J. Sullivan, deputy sheriff of Chicopee, Mass.

Name: John Finster. Age: Thirty-three. Married.

Address: 359 Park Street, Holyoke, Mass.

Born in Grymalow, Poland, September, 1886.

Arrived at port of New York, July 18, 1907, on steamship *Geeland*.

Never applied for citizenship.

Employed at Germania Mills, Holyoke, Mass.

To question: "Are you a member of Communist Party?" he answered "Yes;" the I. W. W.; that he belonged to Holyoke, Mass., Branch No. 1000; that he became a member in 1916; that he destroyed his membership card.

He contributed to support of party financially by paying dues, contributing to speakers' fund; subscribing to paper and attended meetings.

He reads the papers and publications of the organization, Solidarity, Karyer Codsiemy.

Not affiliated with any other organization.

Agent considers his part in this investigation closed.

Copy of this report furnished to Springfield, Boston, Mass., Washington, D. C.

INDUSTRIAL WORKERS OF THE WORLD—OFFICIAL BALLOT.

Vote for one delegate to the national convention of the Industrial Workers of the World, to be held in Chicago, Ill., May 5, 1919.

CANDIDATES FOR DELEGATE.

Charles Miller, Branch Olneyville, R. I.

William Halbach, Branch Paterson, N. J.

K. L. Webert, Branch Paterson, N. J. X

Angel Bracco, Branch Paterson, N. J.

Mark X in square for the delegate you wish to vote for. All ballots must be in by April 15, 1919, in order to be counted.

TEXTILE WORKERS INDUSTRIAL UNION, No. 1000.
JOHN KLAWIN, *Financial Secretary.*

SUMMARY AND FINDINGS.

Case of John Finster.

Inspector John G. Hagbert.

In accordance with letter of February 10, 1920, the Department of Justice states that it has no further evidence to offer in this case.

Appeal of alien accompanies report.

I find that John Finster, 33 years old; married, wife and two children living with him at 359 Park Street, Holyoke, Mass.; that he is a native and citizen of Grzynalow, Galicia, Poland; landed at port of New York, steamship *Zealand*; has taken no steps to become a citizen of the United States; that he has attended schools in England and learned to read and write sufficiently since coming here and it had been his intention to take out his declaration of intention this year; that he is a laborer in the Germania Mills; never was arrested; never was a member of the Socialist Party but admits that he was a member of the I. W. W. in 1916 and 1917; that he is not a member of the Communist Party and knows nothing of the same; that he gives a good and clear reason for leaving the I. W. W. as told by him in the hearing; that he never has attended any meetings of the Socialists, I. W. W.'s or anarchists since his leaving the I. W. W. in 1917; states that he is a member of only one society and that is a benefit association, the Polish Workers Sick Mutual Association; that there has been no evidence produced by the Department of Justice to show that this alien is a member of the Communist Party; that there has been nothing brought out in the hearing that is sufficient in my opinion to classify this alien as a member of the Communist Party.

From his statements I believe that he has no understanding of what the Communist Party stands for and is not, and has not been, a member thereof.

JOHN G. HAGBERT,
Immigrant Inspector.

UNITED STATES DEPARTMENT OF JUSTICE,
BUREAU OF INVESTIGATION,
Boston, Mass., February 10, 1920.

Hon. H. J. SKEFFINGTON,
Commissioner of Immigration,
Boston, Mass.

DEAR SIR: In reply to your letter of the 3d instant (17608-14), you are advised that Special Agent John A. Dowd of the Springfield, Mass., suboffice of this division,

reports that he has no further evidence to offer in the case of John Finster, arrested under Departmental warrant 54809/776, at Holyoke, Mass., on January 2, 1920.

It is, therefore, suggested by this office that this case may be closed at your convenience.

Respectfully,

WILLIAM J. WEST,
Acting Division Superintendent.

And a part of that testimony was an exhibit, sworn to by the alien, Finster, at the time he had been arrested by a secret-service officer of the Department of Justice, presumably having in his hands the warrant from our department that I have already read. This [indicating] is a form. It is quite a usual bit of evidence in these cases—a typewritten form for the special agent of the Department of Justice to fill out, with the person in his custody: "Name, age, address, where born." That is all stated. "Arrival in United States; naturalized; declarant for citizenship, no; where employed; never arrested, no. Are you a member of the Communist Party?" (written in) "Yes," in parenthesis ("I. W. W.").

Now, how anybody could write in "Yes," in answer to that question I do not undertake to explain. In other words, he said he was a member of the I. W. W., which is not a proscribed organization; that is to say, its organic law does not bring it within the act of Congress. The I. W. W.'s are proceeded against and deported when they themselves commit depredations, or are themselves individually within the law; mere membership does not authorize deportation for membership in the I. W. W.

And so there are other statements here: "Apparently a member of the Communist Party." That is put in without being certified in any way, except the signature of the man.

Now, I am going to offer that to the committee for insertion in this record; also the statement of the examining inspector; there is no date for it, but that was probably made some time afterwards—before I get to that, I will give you the finding—well, the examining inspector said to the commissioner general in his memorandum:

As no evidence has been produced or offered or brought out in the hearing that this man is or has been affiliated with the Communist Party, or with any organization that believes in the overthrow by force and violence of the United States Government, or other governments, I have recommended cancellation of the warrant.

That is from Mr. Sullivan, the acting commissioner. I will put that in also.

March 25, 1920—that is, after the cancellations, and when this record came on. That includes the record of hearing by Inspector Hapburg. And the final paragraph is as follows:

From all the evidence adduced at the hearing, it appears to me that the charges in the warrant are not sustained, and, therefore, I recommend that the warrant be canceled and the alien permitted to remain in the United States.

Now, presumably, there was the same condition in all the other cases; though, as I say, I have not looked at the record myself. This was the key case that was kept in that file of correspondence.

Finally, let me call your attention to this rather striking fact also: This man was arrested back in December; he had a hearing on the 23d of January; that hearing did not come to the department until the 30th of March.

The CHAIRMAN. That is, it did not come to Washington?

Mr. Post. To Washington, to the Department of Labor; it did not come to the only judicial officer in these cases.

The CHAIRMAN. Was it in the hands of the Commissioner General of Immigration during that time?

Mr. Post. That I can not tell; I think not; I think it was kept in Boston. And whether the men were on parole, or whether they were out under their own recognizance, or whether they were out on bail, or whether they were in jail, I could not tell; and I could not find out without going into all the cases and communicating with Boston. If that is material, I will find it out.

But the fact is that the hearing took place in Boston on the 23d of January. The telegraphing to release these men began on the 2d of March, more than a month—nearly, if not quite, six weeks afterward. And they were released, of course, and then the file was sent in.

Now, that is the story of "the 38 cases;" and I have told all that I know of the story at present, and all, I think, that can be told.

The CHAIRMAN. It is quarter of 1 o'clock. Have you any other cases that you wish to present?

Mr. Post. I have two points to make, and then I am through. They are not cases, but simply telling you what I am willing to do—

The CHAIRMAN (interposing). Then we will take a recess until 2 o'clock this afternoon; and at the conclusion of your statement the members of the committee may ask you some questions.

Mr. Post. Certainly; any questions that they may wish to ask I will be glad to submit myself to.

(Thereupon, at 12.45 o'clock p. m., the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee reconvened pursuant to the taking of the recess.

The CHAIRMAN. Mr. Post, you may resume.

STATEMENT OF HON. LOUIS F. POST—Continued.

Mr. Post. Mr. Chairman, one incident occurred during the morning that I should like to make a brief further statement about. I of course accept Congressman Davey's statement that he made his speech before—

The CHAIRMAN. Congressman Tincher, you mean?

Mr. Post. Oh, I never referred to Congressman Tincher. My whole reference was to Mr. Davey, who I was stating made this speech of which I was told within 24 hours. He made his speech on the 1st of May, and in what I said this morning I did not refer at all to Congressman Tincher. I beg his pardon for not recognizing him by sight. I never saw this Congressman's speech and never heard of it. I heard of Congressman's Davey's speech after I made the Dudinsky decision. I was told he made this speech on the 1st of May.

Mr. TINCHER. The reason I mentioned it, I testified on the Dudinsky case and I do not think Congressman Davey did.

Mr. POST. If you say you spoke of the Dudinsky case you of course did; but I was told that Congressman Davey made a speech on the 1st of May attacking the Assistant Secretary in the Dudinsky case. I never heard of any other speech and knew of no other. But, at any rate, Mr. Chairman, I call attention to the fact that my previous decision, interlocutory decision, which opened the case for further hearing, decided the case against the alien in that connection—at any rate, unless the alien should put in evidence in his defense. In other words, I decided that a prima facie case had been made sufficient to put him on his defense; and when he did not assume his defense and stood mute, my decision on the 30th of April was simply a confirmation of my previous decision of several days before—a considerable time before.

Mr. GARRETT. I got the impression what you were stating along that line in regard to that was simply undertaking to show the committee that your decision was not influenced by the speech. Is that correct?

Mr. POST. That is all there was to it; yes. I had no knowledge of this Congressman's speech or Congressman Davey's or any other; but the matter came before me in the regular course, and inasmuch as the alien still stood mute, after I had given him an opportunity to prove his case and the prosecution an opportunity to strengthen their evidence, they did not strengthen their evidence, the alien still stood mute, and I decided the case precisely as I had decided it days and days before in the interlocutory decision.

Mr. RALSTON. It was Mr. Davey's speech you referred to before this committee, reported in the Star?

Mr. POST. It was Mr. Davey's speech I referred to, reported in the Star. Of course, I only saw it in the public press.

Now, the code word that was used in these 38 or more cases that I referred to this morning, the code word, as I interpreted it, meant release on his own recognizance. I ought to state that a good deal was tied up in the code. I am sorry I have not a copy of it here, but I would just as leave tell the code word, for, after all, it is not so much for secrecy that these code words are used as for brevity in telegraphing, and I do not see why I should not use it. The word was "relevant." Relevant is stated quite at length in the list of code words as meaning release on his own recognizance if the commissioner is satisfied he will return. I can not remember the rest of the language, but it means he is all the time under surveillance and must report at frequent intervals. That is what is done when the word "relevant" goes out. Consequently, if this man had been relevanted, that is to say, if he had been released on his own recognizance, he would have been constantly under the surveillance of the commissioner, liable at any time to be called in; practically in jail all this time. And yet it had been agreed and telegraphed to me by the examining inspector, or from him through the commissioner at the port, that these men were not guilty. And I submit if I had acquiesced in letting them out on their own recognizance, under those circumstances, instead of canceling the warrants, I should have justly exposed myself to strictures for unfair conduct of that case.

The real question, you see, was whether there was a case against the men; and I may add, further, that if they had been released that

way, I have no doubt they would have been subject to a writ of habeas corpus, that is to say the department would have been subject to a writ of habeas corpus for holding men virtually in custody when it was conceded and had been for two months nearly—six weeks—there was no case against them.

I would like, also, to make a brief statement affecting me personally and the department with reference to a case that the newspapers have made a good deal of, namely, the case of the suicide of the man who jumped from a high building through a window to the street on Park Row in the city of New York. I did not suppose the Department of Labor had anything to do with that case, until I saw in one of the newspapers a statement that he was being held under a warrant of arrest from the department, or a deportation warrant from the Department of Labor. I went to the file then and found that on the 10th of March last I had issued a warrant of arrest. A telegram had come from Mr. Baker, who is assistant at Ellis Island. That telegram interpreted from the code words, reads in effect that a warrant was required for Andrae Salsedo. Then it goes on "anarch, anarchize, anarcotin." Those are in the code words for the acts of 1918 and 1917.

Upon that telegram, which implies that the commissioner at the port has prima facie evidence—that is what he is instructed to have—I signed a telegram on the 10th of March, prepared for me by the Bureau of Immigration, which instructed the arrest of Andrae Salsedo and which thereby conveyed the information to the commissioner at the port that a warrant had been signed and was on its way to him. I, on the same day, had signed a warrant for this man addressed in the usual way, "to the Acting Commissioner of Immigration, Ellis Island, New York Harbor, or to any immigrant inspector in the service of the United States." That warrant was not addressed to anybody but the acting commissioner at New York or an immigrant inspector in the service of the United States. Nobody else had a right to act under it unless he acted for the commissioner or an immigrant inspector. It commanded that Andrae Salsedo be taken into custody and that he be granted a hearing. Here is the exact language in the warrant in the usual form [reading]:

I do hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law.

The next paper is an affidavit of the same kind that I read to you this morning, based upon information and belief, sworn to by Charles J. Scully, who describes himself as a special agent of the Department of Justice, and who says in the course of his personal investigation and those of his officers and employees within his jurisdiction, he is informed and verily believes the following to be true. Then he makes the necessary statements.

The CHAIRMAN. Do you deem it important to go through those?

Mr. POST. I wish to show what course was taken, and I deem it important, in defense of myself and in defense of the department, to go through the papers the Department of Labor had. Here are some other papers that do not bear especially upon it; they are simply papers containing information which I shall not read nor refer to. But when I saw in the newspapers that this man, who had jumped out of that window, was in the custody of the Department

of Labor, I wanted to find out whether we were responsible, and sent for the file and found what I have already stated. I telegraphed to Ellis Island at once to send the record of his hearing. The warrant, as you will observe, had been issued on March 10. This tragedy occurred on March 1, 2, 3, or 4.

Mr. FLEMING. Of May.

Mr. POST. Yes; of May. I mean of May. A telegram was evidently sent to the Bureau of Immigration yesterday (it is dated the 7th) by the acting commissioner at the port of New York. That telegram was not brought to my attention—there may be a perfectly good excuse for that, but I knew nothing about it. I was in the department last night, and it did not come to my attention. This morning I received, probably under my instructions, from Byron H. Uhl, Acting Commissioner of Immigration at New York, Ellis Island, the following:

"Ellis Island, N. Y., May 7, 1920. The above is an official copy of telegram sent you this day." Then the telegram of which that is a certificate is marked "Western Union Telegraph, Office of the Commissioner of Immigration, port of New York, May 7, 1920. Immigration, Washington: Replying department telegram May 6"—that was mine in which I asked for the record—"Andrae Salsedo never in custody immigration authorities and no hearing held under Department of Labor warrant 54861-326"—file figures of the bureau. "Please advise Assistant Secretary Post." Signed "Byron H. Uhl."

I wish to state, Mr. Chairman, on behalf of the department, to the end that it may be known, that although the Department of Labor issued that warrant, the Department of Labor has never had the custody of the man and, so far as I was concerned, I knew nothing about the case from the moment when I issued the warrant, under the circumstances I have described, until my attention was called to the fact he was being held, had been held for some time, incarcerated under a warrant of the Department of Labor. That is all I care to say about that case unless questions should be asked me.

Now, Mr. Chairman, I have gone over several cases this morning, those that seemed to be the most emphasized by the critics of the administration of the Department of Labor in warrant cases, and I will not go over any of the others. I am ready, however, to try to answer any questions. There are a vast number of cases and I may not be able to answer a question on every case and every question on the spot but I will submit freely to the examination of the committee, and what I can not answer from my knowledge I will procure the facts in time.

By way of conclusion, I think it is very important that I should call this committee's attention to one fact with regard to the law in reference to these cases. So far I have been speaking of the interpretation of the law as the Department of Labor has interpreted it and as it has a right to do. It is the only body that has a right to do that, as I shall now show you. And in support of the position I have taken with reference to the law as to the question of who shall decide when there is a difference of opinion and so on, and the general practice, I am going to call your attention and ask you to give very particular attention to the case of Whitfield, an immigrant inspector, against Hanges et al., which is reported in 222 Federal Reporter at pages 745 to 756. I am not going to read the case but I want

to read a few excerpts so as to give the committee a somewhat better understanding than I think the Committee on Immigration and Naturalization have undertaken to give them, of the nature of these immigration cases.

As a basis for that, I ask leave to read into the record, because it is the basis for that decision and of our action and my action and the Secretary's action, the fourth amendment to the Constitution, which is as follows:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

I have made decisions based upon the production of evidence seized unlawfully under that amendment, and which the Supreme Court has held is unlawfully seized and is inadmissible as evidence when so seized.

Now, I shall quote one clause in article 5—the fifth amendment to the Constitution—that "no person shall be deprived of life, liberty, or property without due process of law." And article 8, the clause from article 8, which reads: "Excessive bail shall not be required."

These quotations underlie the whole course of my proceeding in these matters on the basis of which it is proposed to impeach me before the Senate of the United States. They also underlie this decision I now call to your attention and hope the committee, or members of it at least, will carefully read from beginning to end. I will quote first one or two clauses from the syllabus which gives a general idea of the case.

The CHAIRMAN. What is the title of this case?

Mr. POST. The title of the case is *Whitfield v. Hanges*, which is reported in 222 Federal Reporter, beginning at page 745 and was decided in 1915 by the Circuit Court of Appeals, consisting of Sanborn, Adams, and Smith in the Eighth Circuit. The opinion is written by Judge Sanborn, circuit judge, and there is no dissent—three judges are named in the decision and the decision appears to be the decision of the whole court. And I may add another thing, the Attorney General has never brought that case to the Supreme Court. Whether he was asked to or not, I do not know. It is only recently I became familiar with the case. At any rate, it was not carried to the Supreme Court, and the reasonable presumption is it was not a case that the Attorney General wished to take there, or at any rate, if he was not informed that the Secretary of Labor yielded to the decision, as I shall suppose either of them would have been disposed to do. The second paragraph of the syllabus which begins on page 745 reads as follows:

"An alien," and mark this, for much has been said upon the proposition that the Constitution is for the protection of citizens and not for aliens, and a great deal of this investigation turns upon that question, a great deal of our immigrant law administration turns upon that question, has the alien resident in this country the same rights as a citizen under the Constitution of the United States? Now, mark the distinction: An alien appearing at the port and asking to be admitted, concededly has no rights under our Con-

stitution; but an alien once lawfully admitted and resident in this country—our contention has been, the Secretary's, and that is what I have followed, that such an alien has the same constitutional rights, except as to voting and purely citizenship rights, the same rights under the Constitution, under these clauses of the Constitution, that the citizen has. I will begin that part of the syllabus again [reading]:

An alien, as well as a citizen, is protected by the universal principle that no person shall be deprived of life, liberty, or property without due process and his hearing must be in accord with the fundamental principles which inhere in due process of law.

That, I submit, is good American doctrine. Then another paragraph, but not renumbered and not given an additional number; it belongs to the second numbered part of the syllabus. [Reading:]

Indispensable requisites of such a hearing are that the course of proceeding shall be appropriate to the case and just to the party affected; that the accused shall be notified of the charge against him in time to meet it; that he shall have such an opportunity to be heard that he may, if he chooses, cross examine witnesses against him; that after all the evidence against him is produced and known to him, he may have time and opportunity to produce evidence and witnesses to refute it; that the decision or order shall be governed by and based upon the evidence at the hearing, and that only; and that it shall not be without substantial evidence taken at the hearing to support it.

Then the fourth paragraph, the two paragraphs that are numbered 4 in the syllabus, this is the way they read:

"Although the rule of the Secretary"—meaning the Secretary of Labor, for it was one of his cases—"Although the rule of the Secretary be fair and just in appearance, yet if it is applied and administered by public authority with an evil eye and an oppressive hand, so as to deprive a person of his fundamental rights, it is inconsistent with law and void."

I suspect that the Senate would give some attention, Mr. Chairman, to this ruling. The remainder of that paragraph No. 4 is as follows [reading]:

The fixing by the inspector of the time when an alien may inspect the warrant, or the time when he may have counsel, so late as to deprive him of a substantial opportunity of the benefit of an inspection of the warrant and of the benefit of counsel, is an abuse of discretion which renders the hearing unfair.

So much for these parts of the syllabus. That part of the syllabus numbered 6, on page 746, reads in this way:

That is not a fair hearing in which the inspector, after the hearing, imports into the case and bases his finding and recommendation of deportation upon hearsay and rumor of facts regarding which there was no evidence at the hearing and which the accused had no notice of and no opportunity to refute.

Now, that syllabus bears out my contention, I submit, that an alien must have a fair trial. He does not have a jury; he does not have an indictment; and he does not have all the protection that the criminal law would give him, but he must have a fair hearing within the spirit of our criminal laws. Turning, then, to the opinion itself, I wish to read one or two excerpts from that. Here is what it says on page 748—

Mr. GARRETT. Will you permit me to ask before you go further: What was the ground upon which they were undertaking to deport in this particular case?

Mr. POST. They were prostitutes and men found in a house of prostitution—aliens found in a house of prostitution—who fell under

the prostitution clause; but that is precisely the same in all other administrative respects as any of the other clauses. Now, in the opinion of Judge Sanborn, writing for the whole court, on page 748, in the paragraph that has been numbered 2, Judge Sanborn says:

An alien, as well as a citizen, is protected by the prohibition of deprivation of life, liberty, or property without due process and the equal protection of the law. This principle is universal. It applies to all persons within the territorial jurisdiction of the United States, without regard to any difference of race, of color, or of nationality.

I do not think that Judge Sanborn's Americanism should be questioned when he states that.

The CHAIRMAN. What was the process?

Mr. POST. The same as in these cases.

The CHAIRMAN. Under the case referred to in the report?

Mr. POST. The same process. A warrant was issued upon information and belief, or on the telegram of an inspector in one of the cities in the West where a police raid had been made on a house of prostitution, just as police raids have been made in these cases upon open meetings and in private houses without warrant, either of search or of arrest—the same sort of thing—and then the people subjected to a police office inquisition, and then that used as a means of securing their deportation by way of proof that they came within the law. Whether they came within the law or not I do not know. At any rate, the judge said that they had not had a fair opportunity to defend themselves against the very kind of deportation that these gentlemen from the Committee on Immigration are endeavoring to have you consider I should have deported these men upon, regardless of whether they were guilty or whether they were innocent. Let me read the next paragraph in that same numbering of Judge Sanborn's opinion:

An alien is entitled to a hearing upon and a decision of the charge that he has violated the acts of Congress and is, therefore, liable to deprivation of his liberty and deportation, according to the fundamental principles that inhere in due process of law. It is not competent for an inspector or the Secretary of Labor or any executive officer arbitrarily to cause an alien who has entered this country and has become subject in all respects to its jurisdiction and a part of its population, although alleged to be illegally here, to be taken into custody and deported without giving him an opportunity to be heard upon the questions involved, his right to be and remain in the United States. No such arbitrary power can exist where the principles involved in due process of law are recognized.

That quotation is attributed to a decision of the United States Supreme Court, and I submit what I am being denounced for is my refusal to deport in these cases against that principle of decision. And if I am to be impeached for that, Mr. Chairman, I am willing to be impeached and to meet the accusations before a high court of impeachment where the evidence will be considered and the verdict will be based upon the evidence.

One other paragraph, on page 749. I am quoting now from Judge Sanborn's opinion in this case. This paragraph is marked No. 3 in the opinion. He is telling what a fair hearing is, and that is important for you gentlemen to know before you accept this flimsy indictment that is presented to you. Judge Sanborn says:

Indispensable requisites of a fair hearing, according to these fundamental principles, are that the course of proceeding shall be appropriate to the case and just to the party affected; that the accused shall be notified of the nature of the charge against him in

time to meet it; that he shall have such an opportunity to be heard that he may, if he chooses, cross-examine the witnesses against him; that he may have time and opportunity, after all the evidence against him is produced and known to him, to produce evidence and witnesses to refute it; that the decision shall be governed by and based upon the evidence at the hearing and that only; and that the decision shall not be without substantial evidence.

Unsworn affidavits do not come within that, Mr. Chairman, as it has been attempted to make them come within it here— “* * * and that the decision shall not be without substantial evidence, taken at the hearing, to support it.”

Then Judge Sanborn cites several cases, some of which are cases in the United States Supreme Court. Then he goes on [reading]:

That is not a fair hearing in which the inspector chooses or controls the witnesses or prevents the accused from procuring the witnesses or evidence or counsel he desires.

Except as to counsel—I do not say except as to counsel, but with reference to counsel—that has been disregarded or merely perfunctorily thrown up to the alien, Do you want counsel? and his offhand answer taken down, without seriously advising him of his real rights in the matter; and a little further on—I am not going to bother you or encumber the record with all of it, but I want to read enough so that you will see the importance of this decision as bearing upon this case, an overruled decision, a unanimous decision of three judges of the eight circuit, and written by one of the best judges on the Federal bench. Now, on page 751, the last paragraph, marked No. 4 in the opinion, “One of the bases of this rule,” there is a rule stated, a rule of the department that entitles the man to counsel. It was an old rule; it was not a very fair one. It left it to the inspector to decide when he would allow counsel to come in. That rule was abolished, I think, very likely under the decision in this case, but of that I am not sure. Last fall, at the beginning of these wholesale proceedings, that rule was, by inadvertence, reestablished in the rules. Until it came to the attention of the Secretary, Mr. Abercrombie, also the solicitor, had not appreciated what that rule meant until the raids had gotten fully under way and he had approved a change of the rule asking the Secretary, to my knowledge, to restore the old rule, and the Secretary, fully in accord with him and with me on that subject, did restore the old rule so that the inspector would be obliged to tell the alien at the very beginning of the proceedings he was entitled to counsel.

“Now, one of the objects of this rule,” says Judge Sanborn, “was to give, not to deprive, the alien of the benefit of counsel. The time when an alien, who is ordinarily ignorant of the law, of legal procedure, and of his rights, may derive the most benefit of counsel is when he is arrested and his hearing begins.”

In the vast majority of cases the aliens here in these proceedings did not have that opportunity. It is true they were given the right to counsel by the inspectors when they got before them, but in nearly all the cases these men were arrested by secret service detectives and examined as soon as they were arrested, their examination taken down, and they were not advised of their right to counsel, and they were not advised of their right to refuse to answer and, on that kind of testimony, the Secretary of Labor was asked, afterwards, to deport them. I proceed with what Judge Sanborn says—

Mr. ALBERT JOHNSON. That is rule 22, is it not?

Mr. POST. I am not sure about the number of the rule. I think you are right, Mr. Johnson; I think that is the rule. It was changed some time ago so as to entitle the alien to counsel at the beginning. Then, after a few days or a few weeks, it was changed back to the old form which the courts had criticized, and this, apparently, was one of the criticisms. Then, when the Secretary's attention was called to it and Mr. Abercrombie found what kind of a snarl that rule was bringing the department into, he asked the Secretary to have the old rule restored. Proceeding in that same paragraph I was quoting, Judge Sanborn says "the time when an alien may derive the most benefit of counsel is when he is arrested and his hearing begins," then he goes on [reading]:

It would have been no abuse of discretion of the inspector to have permitted the appellees to have counsel to advise them immediately upon their arrest and to have permitted them and their counsel to inspect the warrant of arrest, to be present and to take part in the proceedings at the very first stage of the examination and hearing of the aliens. Such a course would have been in accord with the fundamental principles of English and American jurisprudence, consistent with the law, and it should have been pursued. The refusal of an inspection of the warrant of arrest and the refusal to permit the aliens to see and consult their counsel before and to permit them to participate in the proceedings at their examination directly tended to prevent a fair hearing upon the charges against them.

He was referring to the hearing before the inspector. I am referring principally to the hearing before the detectives who grabbed these men sometimes with our warrants and sometimes without our warrants and examined them by police-office inquisition, secret so far as the alien was concerned; and then, upon the basis of the alleged admissions or of actual admissions under the fear of such arrest—and you know, Mr. Chairman, that the admission of a man seized in that way is of very little value, the admission made with no friends present, no counsel present, no chance to think of the circumstances, except he was dragged out of his bed, out of a meeting, with no cause, so far as he knew, brought in the presence of a policeman, a secret-service officer, one or more, and then catechized through an interpreter when he could not speak English, and then told to write his name at the end of what had been written down for him to sign, and that produced as evidence—I submit that this comes clearly within the spirit and almost within the very letter of Judge Sanborn's opinion. In the paragraph in his opinion No. 5 Judge Sanborn says:

Whether or not the weight of the evidence, in substantial conflict at the hearing, sustained the charges against appellees is a question of fact within the exclusive jurisdiction of the officers of the Department of Labor; and the courts, in the absence of fraud and mistake, are without jurisdiction to review or reverse their finding thereon.

And I submit that the legislative body of the lower House is just as much without jurisdiction to pass upon a decision with reference to evidence such as this as the courts would be. Now he mentions that and then goes on to say that there had not been a fair trial in this case. He notes that the court below, which had decided the same thing, had nevertheless done nothing but remanded the case to the Department of Labor, and then takes the ground that the Supreme Court has authorized the Federal courts throughout the Nation to take evidence of its own and satisfy itself. So that the decision comes down in this form:

"Let the case be remanded to the court below with directions to modify the order from which the appeal was taken, to conform to

this practice"—that is, to the practice of receiving testimony outside of the Department of Labor to ascertain whether the man should be deported or not—"and to proceed further in accordance with the views expressed in this opinion."

I would like to read the whole opinion, but I can not; I have read you some of the leading features of it, and again I ask, Mr. Chairman, that this committee consider that opinion as their guide rather than the opinions of some irresponsible men who have no legal conception of the matter and who are trying to dictate to the Secretary of Labor what he shall do upon the evidence before him regardless of what his own judgment and own conscience dictates.

Now, Mr. Chairman, I am ready to try to answer any questions that may be asked.

The CHAIRMAN. Mr. Post, is it your contention that in any of the cases you have reviewed here, the decision you have just referred to has any special application?

Mr. POST. It has an application to nearly all of them. There have been fair trials in very few; that is, in that sense.

The CHAIRMAN. In the sense in which the inspectors who first examined the aliens did not notify them they were entitled to counsel?

Mr. POST. No; not in that sense.

The CHAIRMAN. In the sense in which the plain clothes men, who made the arrests, made some inquiry?

Mr. POST. The plain clothes men and the examination in contravention, acting under our warrant or subsequently putting the alien over into our custody and getting our warrant—the plain clothes men in plain contravention of the principles of that decision, would take a man and examine him and make a record of his examination and then when the inspector took the case, in a very great number of cases, the inspector would say "Did you admit to so and so you were a member of the Communist Party," and base the examination upon that.

The CHAIRMAN. Did that condition exist in the Magon case?

Mr. POST. No; not in the Magon case. In the Magon case the man was in the penitentiary serving out a sentence and was examined in the penitentiary. He was asked if he wanted counsel and said he did, but was unable to bring his counsel there at that time, and they went on without the counsel.

The CHAIRMAN. I do not think any member of this committee will dispute with you or with anyone else the soundness of the decision to which you have referred and the general principles. The question is how far it is applicable to the cases referred to here.

Mr. POST. I am willing to stand upon that absolutely, Mr. Chairman.

The CHAIRMAN. Your first contention is that the Commissioner of Immigration is without authority to act in these matters?

Mr. POST. To make a decision.

The CHAIRMAN. To make a decision?

Mr. POST. He has no more authority than the private secretary of a Secretary would have. The Secretary might say to his private secretary, "Look through the record and tell me what you think of it; give me an abstract of the record and tell me what your judgment is." The Secretary could do that and might accept the judgment on his own responsibility, precisely as he could ask the commissioner general to do that for him.

The CHAIRMAN. The inspectors are under the Commissioner General of Immigration, are they not?

Mr. POST. Subject to the direction of the Secretary.

The CHAIRMAN. They are under the Commissioner of Immigration?

Mr. POST. I am quoting the law.

The CHAIRMAN. He directs them?

Mr. POST. Subject to the direction of the Secretary.

The CHAIRMAN. And they report to him?

Mr. POST. They report to him.

The CHAIRMAN. Does he appoint them or are they appointed by the Secretary of Labor?

Mr. POST. The usual practice, I think, is to recommend their appointment and the Secretary approves. I think that is the usual course, unless the Secretary should direct him to make an appointment. I understand that is the statute.

The CHAIRMAN. They are designated by the commissioner and approved—

Mr. POST. Nominated by the commissioner and appointed by the Secretary.

The CHAIRMAN. The Assistant Secretary of Labor, the position you hold, has a salary of \$5,000 a year and the Commissioner of Immigration has a salary of \$5,000 a year?

Mr. POST. We used to have that salary, Mr. Chairman.

The CHAIRMAN. Is not that the salary now?

Mr. POST. Nominally, but the high cost of living has entered into the matter so as somewhat to reduce the salary in effect.

The CHAIRMAN. That is not peculiar to the Assistant Secretary of Labor.

Mr. POST. Oh, no; you are suffering the same reduction of salary, too.

The CHAIRMAN. But the amount is named in the legislative bill?

Mr. POST. That is right.

The CHAIRMAN. The appropriation bill or the appropriation bills fix the salaries at \$5,000 a year?

Mr. POST. No; the statute fixes the Assistant Secretary's salary, I think—the organic law of the department.

The CHAIRMAN. Yes; but they are appropriated for, and the salary is also fixed for the commissioner?

Mr. POST. Yes. Of course Congress could—

The CHAIRMAN. They are appropriated for from year to year at these amounts?

Mr. POST. But Congress could refrain from making the appropriation—yes, sir.

The CHAIRMAN. Now, what I want to know, Mr. Post, is the reason for your making a change in the credence you gave to the work done in those cases by the Commissioner of Immigration up to some time in March: Did it dawn upon you that he was overfriendly to the Government, or that he was unfriendly to the alien; was that the reason you made the change?

Mr. POST. No, sir; I had given very little credence to those memorandums for years, because I had found out they were unreliable for the reason the men who wrote them under the Commissioner General's supervision wrote them to please the Commissioner General. Frequently I would read these hearings that would lead to one conclu-

sion, lead directly to cancellation, and find the last paragraph calling for deportation. Sometimes I found that a memorandum written up in the direction of cancellation, for instance, would have the last paragraph erased and rewritten. So that I began to suspect that the men who made the memorandums would make them under some kind of duress—they would not feel free to give their own opinion. And I, in all important cases, for years have gone into the evidence, disregarding, except to assist me and to guide me generally in looking through the evidence, disregarding the conclusion and being rather cautious about the statements of fact.

The CHAIRMAN. Have you ever disagreed with the conclusions of the Commissioner of Immigration where he recommended the cancellation of a deportation case?

Mr. POST. I do not know whether I have or not. I think very likely you allude to some remarks I used to make years ago, jocularly, that when a case for cancellation came to me I felt it was pretty safe to approve it; but that when deportation cases came it would be safer to look into the evidence. In other words, the whole spirit of the Immigration Bureau was the police office spirit of keeping the alien out or putting him out without much regard to the facts.

The CHAIRMAN. Was that because of your want of confidence in the Commissioner General of Immigration, or because of your solicitude for the welfare of the alien?

Mr. POST. It was because of my experience in passing on these cases and testing the memorandums that came down.

The CHAIRMAN. But your radical action or attitude that you have recently taken with respect to the Commissioner of Immigration was not taken until these deportation cases arose in large numbers?

Mr. POST. I will have to ask what you mean by radical, Mr. Chairman. The word is very loosely used.

The CHAIRMAN. Then your decision to ignore the Commissioner of Immigration with respect to his opinions or memorandums in deportation cases, conclusions that he had arrived at, or cases in which he had arrived at a conclusion to deport?

Mr. POST. Mr. Chairman, I have told you I have done that for years. What you probably mean is my conclusion to make an absolute and general rule. That did not take place until after I had found, after an observation of six months, that the whole Immigration Bureau was being cluttered up with cases that were delayed, we having criticism for delaying those matters. Either deport or release was the cry. And I found that the Immigration Bureau was cluttered up with cases awaiting the action of the Commissioner General. He explained to me, when I complained of it by memorandum, in one of his memorandums, he had had to be in attendance upon Congress. He was maintaining the right to make a preliminary decision as an adjudication and he kept the files back, and kept men in jail for weeks, and in some cases for months. I had been observing that particular thing and so had the Acting Secretary, Mr. Abercrombie, who conferred with me about it for a long time, and I told Mr. Abercrombie, months ago, the only way to meet this was to meet it by not waiting on the Commissioner General to send his recommendations down, but to follow the law and to act for the Secretary directly.

The CHAIRMAN. The question on which I would like to get your viewpoint, or to get your expression, is whether or not the peculiar political attitude of most of these aliens who come up for deportation under the examination of the Commissioner of Immigration has any influence upon your mind; do they appeal to you because of the peculiar political attitude of most of these aliens?

Mr. POST. Their points of view, you mean? I am utterly out of sympathy and have been for 30 years—I have been fighting that very thing for 30 years. I have no sympathy whatever with that attitude, either the physical force idea of anarchism or the philosophical idea of anarchism. I have been utterly opposed to it and am on record for years as fighting it, opposing it in every possible way I could, with decency. And I have been actuated in these cases simply by the question whether the man came within the law under the evidence or whether he did not. Now, I may have made mistakes there; I do not suppose any man can be inerrant in such matters, and I have tried to draw the line between innocence and guilt under these laws and nothing else.

The CHAIRMAN. I am sure you will understand what I say—

Mr. POST. Oh, I do not misunderstand you, sir.

The CHAIRMAN. The Magoon case appeals to me as a case in which the alien should have been deported forthwith, and I have not heard anybody speak of that case who has not been impressed very much in the same way about it, and I am just at a loss to understand your arrival at a different conclusion.

Mr. POST. I have told you.

The CHAIRMAN. And I am anxious to know whether or not the political convictions of the aliens had anything to do with your arrival at the conclusion you arrived at in that case?

Mr. POST. Not in the slightest. I have not any sympathy with his political convictions; not the slightest. Now, Mr. Chairman, I arrived at my conclusion upon the evidence as I have explained here to-day. I can understand how others can disagree. You may disagree, but you are not the Secretary of Labor and not called upon to make a decision with the onus of responsibility that I was. I found here was a man that, if I deported him, would be shot as soon as he got across the line, in all human probability, and so I went into the record and, as I stated this morning, I considered what his saying he was an anarchist meant. And if I had stopped there I should have been obliged to deport him, although I am going freely to state to you, Mr. Chairman, I should have stayed the proceedings until things quieted down in Mexico if I had decided to deport him. And if I had stood there on that one word, I should have done as I did in the case of Emma Goldman, whose case stood wholly on that one word. She said she was an anarchist and I deported her and I should have done the same in his case. But I found, on reading further, his meaning of the word did not tally with the definitions of anarchism as anybody who has investigated the subject knows; and, because it did not tally, I came to the conclusion he was a man in favor of government and not opposed to government, and that determined the case. I submit you can not find anything anywhere in the case against that. I decided to cancel because he was not an anarchist within the meaning of the law. That was the meaning

off my decision. To the extent I may have been influenced by collateral considerations, there were only two that influenced me: One was that if I deported him he would be shot and the other was I would be taking him away from a family of American children who were dependent upon him. But that did not decide the case.

The CHAIRMAN. The latter consideration did not decide it?

Mr. POST. No considerations decided it except my judgment that the man's belief was not an anarchistic belief.

The CHAIRMAN. Do you find, however, any such definition made by Congress of an anarchist?

Mr. POST. Congress has made no definition of an anarchist.

The CHAIRMAN. But it names an anarchist as a deportable individual?

Mr. POST. Yes; but it did not define what an anarchist is.

Mr. RALSTON. Anarchist might mean anything.

Mr. POST. There has been a question there, too, Shall I tell you about that, Mr. Chairman?

The CHAIRMAN. We have been over that.

Mr. POST. What I mean to say is that the act of 1916 does not define an anarchist.

The CHAIRMAN. 1918.

Mr. POST. Yes, 1918. There was an act previously in which the word "anarchist" occurred. I think that was the act of 1907. And I always maintained that that act was not intended to exclude philosophical anarchists; that is, Quaker anarchists, people who do not believe in violence at all, but also do not believe in Government. The bureau also insisted and the Secretary was in doubt that that law did include that type of anarchist. At one time there came a case before me, that Mr. Parker, who was in the department then, had written the memorandum on. That was the case of a man who had said he was an anarchist like Tolstoi was. The bureau insisted that that word "anarchist" brought him within the law then in force. I insisted it did not; that the law then in force had phrases of "violence" in it all the way through, except the one term "anarchist," and that the term anarchist under that law must be construed in the light of the "violence" phrases in the rest of the section.

The CHAIRMAN. You read that into your definition of anarchist?

Mr. POST. No; I read nothing into it; that was my interpretation and the other was Mr. Parker's. Now, then, where this leads up to this law, I wrote an opinion and Mr. Parker wrote an opinion. We both of us agreed that if a philosophical anarchist were within that law, this man in the particular case was deportable. I wrote an opinion that it was not within the law; Mr. Parker wrote one to the effect it was within the law. We took those opinions to the Secretary and the Secretary said, "We will send this to the Attorney General for an opinion."

The CHAIRMAN. What was the date of that opinion?

Mr. POST. Oh, that must have been three years ago, I should think; something like that, three or four years ago. Meanwhile this man had got a rehearing (Clarence Darrow appeared for him) before we wrote those opinions. At his rehearing he said he was not an anarchist, although before he admitted he was. Mr. Parker con-

tended that was merely a change of his testimony. I agreed with Mr. Parker I agreed that that man, notwithstanding that retraction, was an anarchist if a philosophical anarchist was to be included in the old law. Parker then wrote his opinion; I wrote mine and the Secretary asked the Attorney General for an opinion. The Assistant Attorney General decided, without deciding on the law, the man had said he was not an anarchist and, therefore, he was not one. In other words, he had decided to approach it as you think I decided in this case. Magon said he was not an anarchist and I decided he was not, because of what he said following. So the Attorney General decided that man was not an anarchist because in his second examination he said he was not, and we got no opinion.

Then this law came in and I was informed by Mr. Parker it was so drafted as to leave no question (and I think it does leave no question) that a philosophical anarchist, as well as a physical force anarchist, is included in the law of 1918, if not under the law of 1917.

The CHAIRMAN. As a matter of fact, Mr. Post, don't you think these high-brow anarchists, these college professors, these Harvard and Yale anarchists, who are anarchists and admit it, who write articles on anarchy—these fellows who weep in articles about the laboring man but never labored a day in their lives, who prate about the poor and their rights, are more dangerous than the poor ignorant fellow who is willing to take his hatchet and go out and break up the Government or any of its representatives that he can reach—don't you think that the high brow, the high-brow philosophical anarchist, is the more dangerous of the two?

Mr. Post. I have no opinion about that. I have considered Tolstoi was not a dangerous man, and Tolstoi is the very type of the philosophical anarchist. As to high brows, you of course are using newspaper epithets, Mr. Chairman, and I must ask to be excused from giving an opinion upon mere epithets.

The CHAIRMAN. You understand what a high-brow anarchist is; he is the millionaire type of anarchist, the college professor type of anarchist.

Mr. Post. Suppose you give names; I can answer better if you give names?

The CHAIRMAN. I do not think that is necessary.

Mr. Post. I think that is necessary. I am not going to decide against an unknown man because you call him a high-brow anarchist. If you will name a man, I will tell you what I think of him.

The CHAIRMAN. Oh, there are groups of anarchists of whom you have knowledge, that belong to the elite; they are the esoteric few.

Mr. Post. I will have to have you mention the names, Mr. Chairman. I am not going to give an abstract opinion as to what I think of somebody you have in mind whom I might not have in mind. I do not want to refuse to answer your question, but I submit even on cross-examination that question does not call for a categorical answer.

The CHAIRMAN. I am still anxious Mr. Post—

Mr. Post. I am not, Mr. Chairman.

The CHAIRMAN. Well, I am.

Mr. Post. All right.

The CHAIRMAN. I am anxious to get your viewpoint, because it appears from what you have stated here and from your general atti-

tude you are more anxious to find some excuse for failing to deport an alien enemy (and I mean by an alien enemy, an enemy to the Government of the United States), than to protect the United States from the dangers of an alien enemy within our country.

Mr. POST. Mr. Chairman, I resent the imputation implied in your question. It is not true.

The CHAIRMAN. And I base that on the Magoon case. If we had in this country a majority of Magoons, would there be a Constitution left for you and me to live under?

Mr. POST. I think very likely there would not. And the same thing is true if we had a majority of big business interests that are trying to run the country. I will put the two together. I think both of them are anarchists, although one side resents the term.

The CHAIRMAN. You may put in the other if you like, but you do admit if there were enough Magoons in this country we would have no Constitution under which Magoon could appeal for his protection and for his shield?

Mr. POST. I do not know whether that is true or not. I do not admit anything of the kind, because the only question involved was whether Mr. Magoon was within this law as an anarchist; that is all. I do not know what Magoon's ideas are.

The CHAIRMAN. Then taking his attitude, taking his record, taking what he is doing, and leave enough of them in this country, would there be any government left here for you and your children and for me and my children to live under?

Mr. POST. Taking the record that was before me for decision and my answer to that question would be no. Take what he is doing and I do not know what he is doing and I had no business to know what he is doing except as it appeared in that record of the evidence.

The CHAIRMAN. He states that he does not believe in an orderly government.

Mr. POST. He does not state that.

The CHAIRMAN. Oh, yes. Your counsel shakes his head—

Mr. POST. Well, I shake mine.

The CHAIRMAN. And you shake yours?

Mr. POST. Yes, sir.

The CHAIRMAN. But you have not forgotten the matters to which he declared that he adhered, that were read here in your hearing this morning?

Mr. POST. There is nothing of that kind read in my hearing this morning, Mr. Chairman.

The CHAIRMAN. I will call your attention to this. He adheres to this doctrine [reading]:

Brother laborers, be convinced once and for all that humanity is divided into two social classes, that of the workers who produce all useful things and that of the exploiters, who are those declaring themselves owners of the land and all that comes from the hands of the workers.

It is not probable he could properly class himself among the workers; it is not probable he has produced anything in his life. There is not anything in the 20 years he has lived in the United States to indicate that he is one of the workers. He has been living off labor apparently.

Mr. POST. You know more about him than I do, Mr. Chairman. I do not know anything of that one way or the other.

The CHAIRMAN. I simply say that from the record.

Mr. POST. What you quoted there is a production on Carranza and relates to Mexico, distinctly to Mexico, and not to the United States.

The CHAIRMAN. Let me conclude; it is general in its terms, Mr. Post. [Continuing reading:]

The interests of these two classes are antagonistic; there is no conciliation, because what benefits one of them injures the other, and for this reason there must exist between the two social classes a war to the death, until the exploiting class, capitalists, bourgeoisie, proprietors, parasites, or whatever name you care to call them, disappear, and together with them will disappear the institution called government that only exists to help the exploiting class, and the institution church, that has for its object the keeping in submission and obedience of the masses that they may not rebel against the rich and government.

Mr. POST. Any interpretation of language must have reference to its context. The context of this is the condition in Mexico, the condition of the church in Mexico, the condition of the influences on the Mexican church and the condition of the Mexican Government. Now, I have no opinion one way or the other in regard to them.

The CHAIRMAN. But he is a resident of the United States, publishing a paper in the United States, and circulating it in the United States among our people; he is not in Mexico, is not appealing to the people of Mexico. He does not say "Brother Mexicans."

Mr. POST. He says Carranza and his government—I can not interpret that Spanish, but I can interpret "Carranza." And that is what the whole thing is about. If somebody here can interpret Spanish—I see it is interpreted here: "Carranza stole the sheep's hide, by Ricardo Flores Magón."

Mr. RALSTON. Carranza throws off the sheep's hide.

Mr. POST. "Carranza throws off the sheep's hide," I understand, is the proper interpretation; and all of that, if it relates to Mexico, it was not evidence I could consider. If, Mr. Chairman, you think that is evidence I should have considered, you are here with authority to present the proper resolution to bring me to a proper trial for having made a mistake or for having falsely decided, if that is what your judgment is.

The CHAIRMAN. I am cross-examining you now, Mr. Post, with a view of ascertaining your frame of mind.

Mr. POST. As to what?

The CHAIRMAN. As to whether or not you lean more to an alien enemy who has a peculiarly hostile attitude toward the Constitution and Government of the United States than you do to the enforcement of the laws that have been enacted by Congress for the protection and preservation of the Government and institutions of the United States.

Mr. RALSTON. Does not that, Mr. Chairman, involve the assumption, right in the beginning, that these people are alien enemies, and is not that the very thing Mr. Post had to pass upon? Your question involves an assumption of fact.

The CHAIRMAN. But Mr. Post has occupied and is now occupying a position in which he decides that they are not alien enemies.

Mr. RALSTON. Yes; but he does not commence with the assumption, as your question did, that they are alien enemies and therefore he decides in their favor. That assumption can not be made without assuming the very fact at issue.

Mr. POST. And my answer is no, absolutely and emphatically no. And anybody who knows my record knows that it could not be otherwise.

The CHAIRMAN. Just in that connection, you will understand me, of course.

Mr. POST. Oh, I understand, Mr. Chairman; yes.

The CHAIRMAN. Emma Goldman wrote you a letter or sent you a telegram and used the language "Our friend," addressing you, appealing to you to give some special attention to an alien who was under consideration for deportation. That language is used in this record somewhere. By what license did Emma Goldman, the notorious anarchist, address you in that fashion?

Mr. POST. By no other license than any other citizen or alien of the United States might address me or address you; by the same license that you get letters from your constituents that you do not agree with, nor others.

The CHAIRMAN. Did you act upon that suggestion in that case?

Mr. POST. I forwarded her letter to the proper authority, where it went on file, and I certified to her reputation for veracity, which was the reputation she had; irrespective of what her opinions were or however repulsive to my views her opinions were, she was a woman of veracity, and no one ever questioned that. I have heard of her in various connections, from newspaper men and from other men, from people who knew about her career over a long period of time, and I have never heard her veracity questioned. I had frequently heard it said she was a woman of veracity, and I indorsed that on her letter and sent it to the person who had charge, simply appended to it a memorandum certifying to her veracity and nothing more, so that her letter might have whatever value, with reference to its statements of fact, it might be worth. I knew nothing about them myself.

The CHAIRMAN. Further, as bearing upon your attitude of mind toward these people, the record discloses this condition: A prostitute had her case before you. She was released on bond for \$1,000. She was charged with being a deportable character. But a man charged with being an anarchist and a Communist, under charge for deportation, was brought before you, and he was released on his own recognizance. How do you account for your willingness to release one charged with being an anarchist on his own recognizance, rather than a poor prostitute?

Mr. POST. Mr. Chairman, that is a rather remarkable question. You put one case of one prostitute out of a great number that I have handled in deportation proceedings against one case of one anarchist out of a great number I have handled. Now, I do not know whether—

The CHAIRMAN. This was done on the same day, is the reason I have mentioned it.

Mr. POST. Done on the same day. I have handled piles that high on the same day [indicating]. I do not know of the particular case; if you will call my attention to the particular case you have in mind, I will try to give you a specific answer. But I have treated prostitutes—some of them I have let out on their own recognizance; some of them I have protected against this police animus that seems to have been against them; some of them I have put in jail. I have

tried to decide each of their cases according to the circumstances of the case as revealed by the record. I have done the same thing with what you call the anarchist cases. And I can not compare one anarchist case with one prostitute case and I do not think you ought to expect me to make that kind of a comparison without at least showing me the two cases to which you refer.

The CHAIRMAN. My frame of mind is so different from yours, I think——

Mr. POST. I think very likely, Mr. Chairman.

The CHAIRMAN (continuing). That my attention has been challenged, first of all, to the fact that you have seen fit to change your attitude toward the recommendations of the Commissioner of Immigration in these deportation cases of alien enemies, political——

Mr. POST. Pardon me; I have not, Mr. Chairman, and I protest against that paraphrasing of my specific statement.

The CHAIRMAN. At least you did not change this until a large number of these cases were coming to you for consideration from the Commissioner General?

Mr. POST. Will you allow me to state what the fact was, since you place stress upon that. What I did was this, I continued the process of receiving these little slips, memorandums, from the bureau (I have continued that yet), made out by the Bureau of Immigration, because it is helpful. When I found the cluttering I have described, I sent for files and I made three classifications. One, to send first those the commissioner general had signed. That was in deference to his old practice. Next, to send them whether he had signed or not if he could not make up the quota. And, next, to send the files whether the memorandums existed or not. And my purpose was to clear up that clutter in the Immigration Bureau and to get these cases decided one way or the other. That was what I did. Back of that, I changed the form from "approve" to "deport" or "cancel," and that form I have used myself for a long, long time by striking out the typewritten word "approved" and writing in "cancel" or "deport" with a pen.

The CHAIRMAN. That is a printed form?

Mr. POST. No.

The CHAIRMAN. Provided in the Department of Labor, is it not?

Mr. POST. No; that is a typewritten form made in the cases, when the clerk prepared the memorandum he would make a recommendation and then add the word "approve" underneath, and the title of "Secretary" or "Assistant Secretary." I altered that as I had altered it before. I altered it by a general order this time, but before and for years I had changed that and instead of approving those memorandums, I would strike out "approve" and put in "cancel" or "deport," as the case might be.

The CHAIRMAN. Have you submitted any law question growing out of the relation of the Commissioner General of Immigration to the work that he has been doing and his relation to the Secretary of Labor, to the Attorney General?

Mr. POST. No, sir.

The CHAIRMAN. Or to any law officer in the department?

Mr. POST. No, sir. Oh, yes, sir, I have submitted questions in specific cases.

The CHAIRMAN. In what respect?

Mr. Post. Some general question.

The CHAIRMAN. In respect to what his function really is?

Mr. Post. Mr. Chairman, I have read you what his function is not only in the law but in that case where they pass on his function. I was the only person authorized to decide, and why should I send it to the Attorney General to write an opinion on it? We do send to the Attorney General specific questions, but there has never been any question on that since it was raised.

The CHAIRMAN. But you have not raised the question with the Attorney General as to whether or not the Commissioner General of Immigration has more rights than you now concede to him in the office?

Mr. Post. No, I have not; neither has the Secretary so far as I know. And I have no expectation of doing it and I do not think the Secretary has. There is no reason why it should be done.

Mr. GARRETT. I just want to ask this question: Is this last case which you read to the committee as strong a case in your opinion as the Jackson case to which reference was made yesterday?

Mr. Post. Oh, the Jackson case was in line with that and undoubtedly was inspired by that. I won't say "undoubtedly" but probably was inspired by that. The Jackson case was the case of the Federal District Judge Bourquin in Montana and this was made four years ago.

Mr. GARRETT. I have not read either. I am merely asking your legal opinion about it.

Mr. Post. It is a broader case; it is much broader and more comprehensively discussed in the opinion.

The other was the case of the arrest of an I. W. W. member, I think, charged with coming within this law and his hearing was had, had in a way that apparently contravened the principles of this eighth circuit decision. At any rate, Judge Bourquin wrote the opinion in the Jackson case and sustained the writ, as I recollect the case. But this case was four years older than Judge Bourquin's case.

Mr. GARRETT. I believe I understood you to say, and I am asking that I may know positively, that the reasoning in this case harmonizes entirely with your own reasoning?

Mr. Post. Absolutely; and my own conduct harmonizes with the reasoning in that case. I present that case as the basis of my conduct in these matters, as the comprehensive basis. I do not mean that is the only case, but that is the comprehensive case, and I stand or fall by that case in my own judgment.

Mr. GARRETT. Well, Mr. Secretary, may I ask you another question touching your conception of your responsibility that rests upon you?

Mr. Post. Freely.

Mr. GARRETT. In passing upon these deportation cases, do you feel that you have any other responsibility in connection with them than merely adjudging them?

Mr. Post. I do not quite understand.

Mr. GARRETT. I will try to make myself perfectly clear, because I am seeking information.

Mr. Post. You see I have all the responsibility of the Secretary of Labor when he is away, and all the responsibility of the Secretary of Labor in the particular things he passes over to me to do. That is the reason I do not understand your question.

Mr. GARRETT. All I am seeking to obtain, which I know I will obtain, is a frank statement from you.

Mr. POST. I will be very glad to answer your question.

Mr. GARRETT. Do you feel it to be any part of your duty to encourage the searching for proper evidence in these cases?

Mr. POST. If I knew of evidence, I would bring it to the attention of the inspector, whatever it was.

Mr. GARRETT. I will tell you what I have in mind; we can be specific and perfectly frank, and we can make ourselves much better understood by citing specific cases. You referred to a case here this morning—I have forgotten just which case it was now—in which there were certain things I believe you called protocols?

Mr. POST. The record called them protocols.

Mr. GARRETT. With the statement they were not connected up in any way with the statement that the letter of the Department of Justice—which contained, as I understand, the statement of the agent of the Department of Justice—was not evidence. Now, did you feel it incumbent upon you in any way to undertake to verify or to in any way disprove the protocol or to ask for additional evidence upon that question, or did you feel you had performed your full duty when you decided it upon the record as it was laid before you?

Mr. POST. I was deciding upon the record as it was laid before me. Your reference is to the Dudinsky case?

Mr. GARRETT. Whatever it was.

Mr. POST. I will tell you what it was. The Dudinsky case was heard, as all the others are, by an inspector at the port who has authority there, of course, to conduct examinations. Now, he had conducted the examination here in which the evidence he passed forward, while it was very weak, nevertheless seems to me to make out a case to put the alien to his proofs. The alien had stood mute. I decided in the first instance in this case, long before these speeches that are spoken of, to send that case back for further hearing. That is my function as an examining officer. He is charged by Congress with conducting the examination. I sent that back for further hearing, with a memorandum indicating, while the evidence was very slight, yet it seemed to me to be enough to put the alien to his proof. I sent it back. The inspector did not procure any additional evidence and the alien still stood mute and when the record came back to me I did not send it back again because I had given both the Government's side and the alien's side an opportunity for a rehearing and explained why I had not sustained it in the first place. When it came back with the alien still standing mute, and there being some evidence against him, I decided to deport.

Mr. GARRETT. Yes; I understand that. I simply mentioned that case in order to ascertain, if I could, just what you felt your obligation to be; whether or not—and I express no opinion about it one way or the other; I do not know—whether or not you feel it to be your duty to act in any more than purely a judicial capacity on the record as it comes before you; whether or not in was any part of your function in the enforcement of this law of Congress to—

Mr. POST. Oh, the work is prosecuted in an official as well as a judicial capacity.

Mr. GARRETT. I do not say that exactly.

Mr. POST. I am saying that for short. Let me say if a file came to me and I found evidence was defective that might be cured, I might make a suggestion to that effect to the examining officer; but the examining officer is charged with the responsibility for conducting the examination and I have a right to assume (for there is work enough to do in these matters) I have a right to assume he has conducted the examination to the fullest extent of his ability and his facilities. If I found a manifest lack that could probably be cured, I should feel, not as an absolute requirement, but still as a part of my general duty, that I should call his attention to it. I do not know whether any such cases have occurred, but I am pretty sure there have been a number of that kind where I have called attention. In this case I did call attention to the lack and sent it back for rehearing. Then, as I say, it came on with the alien still standing mute and I did not send it back again.

Mr. GARRETT. Of course, from my standpoint there is an inherent vice in any governmental institution that embodies in itself threefold governmental functions.

Mr. POST. Yes; that is one of the evils of this whole system.

Mr. GARRETT. And I was wondering about that as applied in the exercise of this particular function, just what the duties were.

Mr. POST. I have been wondering at it during the past seven years, Mr. Garrett. I have done more than wonder at it because the whole system as it exists has a tendency to turn the Bureau of Immigration and the Immigration Service, both, into a prosecuting set of men.

You know perfectly well that a man can not be a prosecuting officer and a defender at the same time, and he is pretty apt to be, but unconsciously, because I am satisfied that most of the men in this service that I have come in contact with are perfectly honorable and honest men and intend to be good officials, but they have a feeling that their business is to find against the alien if they can. Naturally there grows up that esprit d'corps, that bureaucratic tendency which makes men in that position, who are prosecutors, feel that they must make good by securing convictions. That is the tendency and that is what Judge Sanborn criticised in that case yonder, that this man had shown himself to have the spirit of a prosecutor. Now, the same condition might arise if that comes to the Secretary of Labor; that is, that he will be a prosecutor too, and therefore I think it is best that he should maintain a judicial attitude as much as possible. At the same time, any judge, I think, who saw a loophole in the testimony that the district attorney was presenting might call his attention to that directly, and so I would feel in such a case that I should call the examining inspector's attention to it; but I do not think I have any power or any authority to order an examining inspector in the conduct of a hearing, because that is placed in him.

Mr. GARRETT. Who does?

Mr. POST. Does what?

Mr. GARRETT. Have any authority or power?

Mr. POST. I do not think anybody has, although through this bureaucratic tendency an examining inspector naturally falls under the feeling that he must please his immediate superior and his immediate superior is apt to feel that he must please his immediate superior, and so you get the bureaucratic tendency.

Mr. GARRETT. Would it reach the Commissioner General of Immigration?

Mr. POST. It is very apt to reach him in that unconscious way.

Mr. GARRETT. And you do not think he would have any authority to direct these investigations?

Mr. POST. I do not see how he would; I would not make any particular objection if he exercised the authority in a proper way, but I do not see—

Mr. GARRETT (interposing). I am talking about legal authority and not the exercise of authority.

Mr. POST. The law is very definite that the inspector shall conduct the examinations—that an inspector shall conduct the examinations; that is very explicit and there are some other explicit declarations in that connection, namely, that he can issue subpoenas, and if a witness does not respond in person or with documents that have been sent for he can then apply to a Federal court for process to compel the production of the witness and the documents. Now, all that is put in the hands of the examining inspector and not in the hands of the commissioner general or in the hands of the Secretary of Labor; at least, that is the way I construe that section.

Mr. GARRETT. Well, in your view of the matter does the Department of Justice have any authority whatever in connection with this law?

Mr. POST. Not the slightest. They have furnished detectives to unearth cases and the detectives have furnished information and belief affidavits on the basis of which the Secretary of Labor has issued warrants; but all the proceedings of the Secret Service as well as of the Department of Justice prior to the issuance of the warrants are entirely outside of our jurisdiction; we have nothing to do with them and we are not responsible for them in any way. We have given warrants to representatives of the Department of Justice because we have not the force to execute this great number of warrants that were asked for by the Department of Justice under its appropriation for that purpose, but we have nothing to do with a case until we issue a warrant and the Department of Justice has nothing to do with a case after a warrant is issued; that is, as a legal matter, and I believe that is what you mean.

Mr. GARRETT. Yes.

Mr. POST. Simply as a legal proposition?

Mr. GARRETT. Yes.

Mr. POST. That is my judgment on that point.

Mr. GARRETT. I suppose, of course, it has never been regarded necessary to ask the opinion of the Attorney General touching the rules of evidence, and so on, to be used by you or by the Department of Labor in deportation cases.

Mr. POST. You mean in individual cases?

Mr. GARRETT. Yes.

Mr. POST. When a question has arisen in an individual case that involves a distinct proposition of law that has not been passed upon by the courts directly or that has not become usual in the course of procedure the Attorney General's opinion is requested. His opinion has been requested several times with reference to particular points, both before we came into control of the service and since.

Mr. GARRETT. I suppose there has never been any official interchange of opinions between the Department of Labor and the Department of Justice in regard to this decision in the Whitfield case?

Mr. POST. I do not know whether there has or not. I can not say as to that particular case, but this situation has existed: That circuit courts in some districts will decide one way with regard to the Secretary's authority; on an application for a writ of habeas corpus a circuit court in one circuit will decide one way, while in another circuit, in a case involving the same question, they will decide the other way; and there are cases, especially the Chinese cases, I think, where we have been following two courts, following the decision of the circuit court in one jurisdiction and an opposite decision of the circuit court in another jurisdiction, according to where our case was. Of course, if we did not follow the procedure adopted in one circuit we knew a writ of habeas corpus would lie and we had to conform to the decision in that jurisdiction.

Now, in that connection the Department of Labor has on more than one occasion, I am very sure—and I am speaking absolutely from memory now—on several occasions, I think, since I have been there, asked the Attorney General to appeal a case where the Secretary of Labor was decided against in habeas corpus in order that the whole question might go up to the Supreme Court and be decided for the whole country, the difficulty being this: That if a circuit court decides in favor of the Secretary of Labor on a habeas corpus proceeding the man is deported; he may not have the money to carry the case up to the Supreme Court so it never gets there; a case against the alien is very apt never to get to the Supreme Court if the decision is against him and he has not the means to carry it up. When the decision is the other way on the same point, when the decision is in favor of the alien, then we have asked the Attorney General to carry the case up, and in more than one instance, I am sure several of them, the Attorney General or his assistant has felt that the case was a poor one and that he probably could not win, and no lawyer, whether he is an official lawyer or one in private practice, likes to get licked, and so cases are not carried up. There is, therefore, a condition in which these cases have been decided both ways; one was in one circuit and another in another, and we have never been able to get a decision in the Supreme Court. Now, whether the Attorney General was asked in that case to carry that case up, I do not know, but I know the condition has existed which I have described.

Mr. GARRETT. The Silverthorn case, to which you referred yesterday, was not a deportation case, was it, but the Jackson case was a deportation case?

Mr. POST. Yes, sir.

Mr. GARRETT. There really has not been, then, a decision by the Supreme Court of the United States in these deportation cases involving the same questions that were involved in the Whitfield case and the Jackson case?

Mr. POST. I do not know what was involved, and you can not ask me to say what has been decided; I have no knowledge of any decision of the Supreme Court which sustains distinctly in an immigration case all of those propositions, but I notice that Judge Sanborn cites

the Supreme Court in several cases there in support of very important propositions in his opinion. However, I have not looked at those decisions.

Mr. Pou. Mr. Secretary, your political convictions have been represented in all sorts of ways, so that I believe I will give you an opportunity to say what your politics are, if you desire to do so.

Mr. Post. What do you mean by "politics"? Party politics or general political opinions?

Mr. Pou. Well, both.

Mr. Post. Well, I do not know. I am afraid the committee might get tired if I go into that. Now, let's see. I was originally a Republican because I was a democrat; I was a Republican with a big "R" because I was a democrat with a little "d"; I was a Republican of the Abraham Lincoln type. I suppose you will allow me to give a little story of my opinions?

Mr. Pou. I am doing this because I have heard your politics represented in so many different ways that I want to give you an opportunity to declare yourself if you desire to do so.

Mr. Post. Well, I am perfectly willing to declare myself, but I should like to do it quite fully, if I do it at all. I will say in the beginning that I am color blind; colors do not scare me. I am not a bull at any rate in that respect, whether the colors are red, white, black, or blue. I can remember my grandfather telling me of the politics of his younger days and of his boyhood, and how in those days Thomas Jefferson—he brought me up on Thomas Jefferson and the Declaration of Independence—how Thomas Jefferson was denounced as a "red republican," so I remember that in that period the red color prevailed as the best way of denouncing an opponent with whom one did not agree and whom one could not answer by argument. Thomas Jefferson was a red republican.

Then in my own day I did not need my grandfather's assistance because at the very beginning of my interest in politics—and I carried a banner at a hickory pole raising to celebrate the campaign in which James Buchanan was elected President—I carried a banner that I painted myself, on wood at that time, so that I remember those days and a little later because the color scheme was changed from red to black and Abraham Lincoln, who stood in my estimation in about the same place as Thomas Jefferson, was in my time a "black Republican"; everybody was scared by black in that time and all you had to do in an argument, in order to avoid answering an unanswerable proposition, was to say "You are a black Republican," and that ended the argument. Abraham Lincoln was a black Republican. I was of the Abraham Lincoln sort. I look back at the old platforms of the late fifties and early sixties and middle sixties and that period before the Republican Party was taken possession of by other interests, and I look back upon those platforms a good deal as I look back upon the Declaration of Independence. They were declarations in favor of human freedom and human equality. So I was a Republican with a big "R" and a little "d." I had great confidence in the Republican Party as a democratic party, democratic to the core, democratic with a little "d." And I went into Republican politics in New York in my earlier days, after I had become of voting age, and I think I had better tell you how I came to leave the Republican Party and how

for a long time I was a "scratcher," voting for Democrats often, but holding my nose when I did it because I had grown up to detest Democrats with a big "D." In 1874, I think it was, I was in the United States attorney's office as assistant attorney, assistant United States attorney, and I was in Republican politics.

I lived in a district which was—the assembly district, the legislative district—Democratic, Tammany, and the congressional district was Democratic. Fernando Wood represented it in Congress at that time. I was a delegate to the congressional convention of 1874 and I found that I had been selected by the powers that were—which was Mr. Arthur, afterwards President—he was the Republican boss, head of the customhouse, and I had been selected to be the chairman of that convention. I felt I was getting along in politics and was very comfortable about it. Well, I was duly elected chairman of the convention and we had an understanding that was conveyed to me—a very distinct understanding—that we were to make no nomination for Congress, but John Hardy was going to run as a stump Democrat against Fernando Wood and beat him, and I was in for anything that would beat Fernando Wood. John Hardy was a pretty good sort of a man; he had run eight times and had been defeated each time on the stump, but had not been a regular Democrat. In return for our not making a nomination Hardy was going to nominate our candidate for assemblyman, so that we stood to get Fernando Wood beaten for Congress and an independent Democrat in there and to beat the Democratic candidate for the State legislature, the assembly, and put in a Republican. I thought that was good politics; I was satisfied with that, and it was understood, therefore, that when this convention met it was to adjourn subject to the call of the chair; I was the chair and I was told that I would do a good thing if I never called it together. I thought so too; I agreed to that; that it was the way to handle it.

Now, a few days before election, on the Thursday before election, I was waited upon by the Republican boss of my district and told that Mr. Arthur wanted that convention called to make a nomination. I said to him, "Why? We have understood we are not to make a nomination because that means the election of Fernando Wood." He said, "Yes; I know that; but them's the orders." He was the boss of my district, my assembly district, and I kept away from him all day, because I really thought they were his orders and that he came from the customhouse, and I did not want to get them authoritatively. I said to him, "I believe you, but suppose it should be denied I have been given these instructions?" He says, "I will fix that; I will get it in writing from Arthur." I knew he would, and kept out of sight for awhile, but they reached me, and I assented and called the convention. When it got together none of the delegates were there, but their places were filled with office holders, and they promptly nominated a man whom I afterwards learned got \$10,000 for running as the Republican candidate for Congress.

The effect of that was to elect Fernando Wood and defeat Hardy, and I afterwards—I felt very much ashamed of that thing and I quit the Republican Party because it was a mere machine seeking personal advantages. That had all come out to me. It was not a democratic party any more. Lincoln's day was over. Afterwards I met Mr. Hardy and told him how ashamed I had been of what I did. He said,

"My friend, you need not be ashamed of it at all; you did the right thing." "But," I said, "Mr. Hardy, I ought at least to have gone to you and told you what was up." He said, "If you had come to me I would have given you the very advice that you took. That was the only thing for you to do politically. Mr. Arthur was just as much averse to that change of plan as you were. He didn't want to give you the orders, but he had to." I said, "What do you mean?" "Why," he said, "Fernando Wood went to the White House and those orders came down from the White House to Arthur and were transmitted to you."

Now that was my experience in Republican politics. Lincoln's days, as I say, were over and I quit them, and for a good while I voted the Democratic ticket. I say I had the old traditions, but in the Cleveland campaign I thought I began to see a light that harmonized with my own democratic instincts and feelings, and I supported Cleveland. Since then with more or less satisfaction I have considered myself a Democrat with a big D as well as a democrat with a little d. That is to say, a member of the party.

Now, lying back of that experience are my views of politics in general. You have used the word "anarchist" and "anarchy," and you have used—I think "socialist" has been used—other terms have been used, whether those particular terms were or not. I will state my attitude toward anarchism and socialism. I can not say that I am not in some degree an individualist. I am. I believe that there is—and if you want to call it anarchist, I don't care for epithets, but individualist I am to a degree; socialist I am to a degree; but I am not a supporter of the Socialists nor of the individualists. The reason is that I consider that individualism and socialism are two parts of one whole; that one of them is like the centrifugal force and the other like the centripetal force of physics; it is their operating together that brings about a balance.

That is my theory of the general proposition, and so while I am not an individualist absolutely I am an individualist to the extent of believing that within the sphere of individual relationships the Government should keep its hands off; that what a man thinks—and if it were a question of drinking, I should say what a man drinks—is not for the Government to say, although the drink habit had built up a vast business organization that threatened the American Government, undoubtedly, and therefore I became a prohibitionist, not on sumptuary grounds, but on political grounds.

Now I think that on the individualistic side the individual should be left free to think and to act as he pleases in politics, in religion, in sociology, in anything else, so long as he does not thereby or in any other way interfere with the equal liberty of every other man. That was the belief of John Stuart Mill, and I indorse John Stuart Mill to that extent. On the other side is the socialist. Socialism of our time repudiates individualism. Its idea is that society has everything to do with the individual and that the individual is merely a little floating speck in it; so that socialism would put society—would put all individuals under the control of society in all their doings, virtually their individual as well as their social activities.

I say that there are two sides which are not distinct but correlative; individualism within a certain sphere, socialism within a certain sphere, the two cooperating to produce ideal government. And I

consider that the United States Constitution affords the opportunity for achieving that result, the United States Constitution with its amending clause. If there were no amending clauses in the Constitution and were no amending clauses in the constitutions of the States we would be tied up; but the amending clause and the ballot extended now legally—and we hope practically soon—to all who are governed, the Constitution of the United States thereby affords a peaceable method of changing this Government whenever the dominating force of public opinion wants it changed; and therefore I believe that the relations of individualism and socialism, those two forces of society, can be controlled under the amending clause of our Constitution by the peaceable ballot, and I am utterly opposed to force or violence in trying to change the Government. I am utterly opposed to making it an individualistic Government by any method; but if the majority wants it so and gets it through legitimate constitutional means, then I acquiesce. The same with socialistic government. The same with the balance between the two.

Mr. Pou. What I wanted to specifically bring out—you never at any time have identified yourself with any party except either the Democratic or the Republican Party?

Mr. Post. Oh, yes; I identified myself with the United Labor Party in the city of New York in 1886, when Henry George was its candidate for mayor. I was chairman of the convention of the United Labor Party the following year at Syracuse, and had the fight with the Socialists there that put them out of that convention. With that exception and two years in the Greenback Labor Party, 1883 to 1885, I don't think I have been identified with any but the Republican and the Democratic Parties.

Mr. Pou. You have never been identified with the Socialist Party at any time?

Mr. Post. Not at all. On the contrary, I have been hostile to the Socialist Party and the socialist movement, although I have many friends among the Socialists. I have friends among Socialists who might write me such a letter as Emma Goldman did, but I am not a Socialist; I have friends among Catholics who might write me such a letter, but I am not a Catholic; I have friends among Protestants; I have friends in so many religious denominations who might any of them write me such letters, but I would not necessarily thereby accept their doctrines. And I have friends in the Republican Party, friends in the Democratic Party, friends, I think, in the various factions of both.

Mr. Pou. Now, Mr. Secretary, in respect to your administering this law of Congress, what is your view as to the wisdom of passing the law that you are administering, having the anarchists deported?

Mr. Post. This law of 1918?

Mr. Pou. Yes.

Mr. Post. As Assistant Secretary I haven't any view, except as to whether the men that come before me fall within the law or not.

Mr. Pou. Well, outside of your official position.

Mr. Post. As a citizen?

Mr. Pou. Yes; as a citizen.

Mr. Post. As a citizen I believe that there should be such a law that should apply to people who are in favor of physical force and who commit an overt act, so that they can not be snatched up by

some chance expression that they make, an expression which corresponds to that of the conservative people—some very important ones have done it—who say, for instance, the thing to do with “men that disagree with me” is to put them up against a wall and shoot them. Now, I don’t believe that any of these men who use that loose expression mean that they want to put anybody up against a wall and shoot him for disagreeing with them in their opinions. And so a good many expressions of that kind come out on the stump, on the soap box, in publications, which are not really meant to convey a violent or dangerous meaning at all. But I would not only deport the alien; I would convict and imprison the citizen who advocates the overthrow of the Government of the United States or the State governments by means of force, provided the evidence shows not only a positive state of mind in that direction but some overt act which proves the man to have a criminal purpose. Now, within that limitation, I would have this law just as drastic as it is.

Mr. Pou. But you would require some overt act?

Mr. Post. Some overt act indicating that what the man said was not an angry expression under casual circumstances, but was really an indication of his purpose.

Mr. Pou. Now I understood you, I think correctly, awhile ago to speak of the police spirit, I believe, was the expression you used.

Mr. Post. Something like that.

Mr. Pou. That pervaded the Bureau of Immigration under the Commissioner of Immigration, I believe you put it, that favored deporting people regardless of the facts.

Mr. Post. Pretty much.

Mr. Pou. Now I would like to have you elaborate on that a little bit.

Mr. Post. You want me to think up cases in which that occurred?

Mr. Pou. No; you can explain more fully just what you mean.

Mr. Post. What I mean by that is, that under this old practice that originated in a law that has been repealed long ago—under this old practice the examining inspector, who was in the mental attitude of a prosecutor—he had arrested the man; he had complained of him, in all probability, either for somebody else or himself; he sat there conducting the examination, and he would naturally feel—I am not making any imputation against the man; it is human nature—he would naturally feel that it was up to him, if he has asked for a warrant, to see that that warrant was not asked for thoughtlessly, and so as a rule he would be very apt to find that the man whose arrest he had asked had, upon examination, turned out to be what he had supposed he was in the beginning. Consequently, a police spirit develops, naturally. Now, again I say, I am not reflecting on the man; I am giving you what is human nature. The effect of that is to turn that inspector into a police investigator, and there are numerous cases in the department that have come to my attention from time to time during the past seven years in which it has been obvious that the inspector was trying to get the man out of the country, not because he had violated the law, but because he himself must make good; or in some individual instance there may have been something worse than that.

I will give you one case, the first one that came to my attention, and it shocked me. Early in my career in this office—I think it was

in the fall of 1913—a file came to me that was somewhat in this shape: Four or five or six Greeks were in partnership in a certain business, a side line from their own businesses. One of these Greeks kept a tavern, a hotel, in one of the western cities. It was a hotel for workingmen. Women were sometimes there, but it was quite exclusively a hotel for workingmen. The other Greeks apparently, from what little I could gather, wanted to buy out this Greek partner of theirs, and they apparently thought it would be a good deal easier to buy him out if he were in Greece than if he were in Kansas City; so they went, some of them, either to a friend or through a friend to the inspector, the inspector in charge. The inspector in charge sent for a warrant for this man. He got a warrant and arrested him. He brought him into his place, examined him; did not tell him he had any right to counsel; had these other witnesses there to testify; told him, if I recollect right, that he might examine but did not give him any right to counsel, and then told him that he might send for counsel if he wished to. He turned loose these witnesses, who were complaining, and the witnesses—there was no process of subpoena in those days—it was that kind of case that led to the provision that subpoenas can be gotten—so they could not be brought there. The attorney apparently had had some experience—the attorney whom this Greek employed—had apparently had some experience with these cases, and so he took his own letterhead and he wrote in very formal archaic terms—the archaic terms of a subpoena—“you are hereby commanded to be and appear before” so and so, and signed it as “attorney” for the alien. Well, when these men got that, they thought that was a command to appear; and two of them, I think it was, out of three did appear. I am not sure but all of them did appear, thinking they had to, and the inspector was very angry about the whole thing—that appeared on the record—that this man had assumed to pretend to send a subpoena. The inspector recommended the deportation of this man on the evidence of his partners, who, as I say, thought it would be easier to buy him out in their side line if he was in Greece than if he was in the United States.

Now the evidence against this man related to the hotel that he kept. It was testified by some of these others that a woman had come into that hotel and that she had occupied the same room with a man, and therefore he kept a house of assignation. That was the case. Utterly unproved, and yet that inspector asked to have the man deported, and through the commissioner-general's office came the recommendation to the department to deport him.

Now I raised, mildly speaking, a row over that case. Time and time again cases as bad as that came down with recommendations from the Commissioner General—he didn't know, probably, what he was signing, but he did sign them, and thought he was deciding the case primarily, sent them down for approval. We had numbers of such cases.

I don't know whether that answers your question, Mr. Pou, fully.

Mr. Pou. There is just one other question that I wanted to ask you.

You realized, of course, Mr. Secretary, that all of these rules that you had laid down—or the imposing of these deportation regulations—that every one of them operates to make it more difficult to deport the alien?

Mr. Post. Every rule in the interest of personal liberty makes it more difficult to take personal liberty away from a man who is entitled to his liberty. The question of innocence or guilt has that thrown around it; and as to those rules, Mr. Pou, I am perfectly willing to go before any tribunal in this land, from the Senate down or any competent court, and have those rules passed upon and have myself judged as to whether those are sound rules under the American policy, or whether they are not.

Mr. Pou. You think, then, that the alien should have the benefit of the reasonable doubt, just as though they are criminals put upon trial?

Mr. Post. No, sir; I do not. I have not said so and I have not acted so. You take that Rubinski case, you couldn't fine him \$10 and send him to the stationhouse on that evidence, and yet I have held it was sufficient to put him to his proofs. No police court would have held that, I don't believe—no competent police court—no criminal court, certainly.

Mr. Pou. I want to say, Mr. Secretary, that my feeling is that in what you have done, speaking for myself, I believe you have followed your sense of duty absolutely.

Mr. Post. Well, I thank you, Mr. Pou, for that. You are the first man that has said that who comes from the opposite side, and I thank you for it.

Mr. Pou. I don't admit that I am on the opposite side here.

Mr. Post. Whose sympathies are on the opposite side. Let us put it that way.

Mr. Pou. I am probably not in sympathy with some of your views; surely I am not, but in your administration of the office, whereas my decisions, if I had been there might have been different, I feel that it is due to you, feeling that way about it, that I should say that, and I do say it with pleasure.

Mr. Post. Now I wish to say, and thanking you for that, Mr. Pou, I wish to say that I am perfectly willing to concede that if there had been a tribunal of three men they would have disagreed frequently in these cases that I have decided, and on both sides. I am satisfied that a tribunal would have canceled warrants that I refused to cancel, and that a tribunal would have deported where I refused to deport. That is to say, at least two-thirds of a tribunal of three. And if you will permit me now to add a suggestion for you Members of Congress who want this immigration law carried out—a proper immigration law carried out—let me throw in a suggestion or two as to the kind of law.

This law to-day, these laws, they are simply a crazy quilt; they are calculated to drive any man crazy who administers them and has a sense of his responsibility. And for many reasons. There is no provision under which the Secretary can with any care exercise a judgment as to humanity in any of the cases. There have been some very serious cases here. For example, men on the other side fighting for this country become acquainted with women to whom they become engaged—alien women. There have been some cases where the men come over here in transports, they arrange that their sweethearts should come over to marry them. The sweethearts would come here to Ellis Island; they couldn't read 40 words in some

language or dialect, and for that reason, and that reason alone, they had to be deported. Now, those were serious cases.

Mr. JOHNSON of Washington. The House has a bill on the calendar correcting that.

Mr. POST. I understand that there is such a bill for that particular thing, Mr. Johnson; but what I am suggesting is not a special relief but such a revision of the immigration laws as will make their administration fair and allow some discretion to the Secretary which he can exercise. I made the proposal when the law of 1917 was passed, but you were not on the committee then; you were not chairman of it at that time.

Mr. JOHNSON of Washington. No.

Mr. POST. Which they rejected. My proposal was this: That the Secretary should have discretion in the case of individual hardship to admit anyone that came from the other side—a case of individual hardship—but it was said, "This Secretary is excluding people; he might be all right, but another Secretary might come in and flood the country with immigrants." I answered that, "then I will draw a memorandum." And I did, as follows:

No. 1. The Secretary should have full discretion to admit any alien excluded at a port, provided it was a case of individual hardship calling for humanitarian action.

No. 2. In any case in which he admitted, that he should make a memorandum on the file, stating why he admitted, stating it so anybody would understand what the hardship was and why he admitted the alien.

No. 3. That he should report in writing to Congress, with his reasons, every year all the cases which he admitted in which he admitted under that rule.

Now, I think if something of that kind were put in it would be a great relief in the administration of this law.

Mr. JOHNSON of Washington. Let me make a little statement there.

Mr. POST. Will you allow me just to finish, Mr. Johnson, one other point I wanted to put in?

I don't think that this law ought to be administered, either the appeal or the warrant cases, by one man exercising absolute administrative authority. I think that there ought to be, and I have recommended that the Secretary put such a tribunal in his office by detail—that there should be a tribunal, say, of three competent persons, on whose recommendation—who should be judicially minded people, fit for the office and who should pass on these cases and make these memorandums and recommendations and that the Secretary of Labor—that they should make the recommendation subject to the approval of the Secretary of Labor, so that the Secretary of Labor would be approving the action of a responsible judicial body in his own office, that he would know whether he could trust or not, and that would be a sufficient justification for him. Then these cases could be taken up judicially and the recommendation would be a judicial recommendation instead of a police office recommendation.

Now I beg pardon, Mr. Johnson.

Mr. JOHNSON of Washington. If the chairman will permit me a very brief statement to the effect that at the beginning of this session of Congress Judge Burnett, who had been the ranking minority Member, died; we lost his services on the committee which has never been a partisan one since I have been on it—there never has been a partisan word in the committee—we undertook to straighten up some of these tangles, some of these apparent defects in the law, and one of the first

acts of the committee—of myself as chairman by direction of the committee—was to address a letter to the Secretary of Labor asking for suggestions, to which we received a very formal reply—I can't quote the exact words—that he did not care to make suggestions.

Mr. POST. When was that?

Mr. JOHNSON of Washington. That must have been in May of this year. I would like to put that into the record.

Mr. POST. I have no objection to your putting it in.

Mr. JOHNSON of Washington. Now, something may come out of all this, you see.

Mr. POST. Mr. Johnson, if you will write me a letter—you have been having your communications with the Bureau of Immigration, as if that were the department—if you will write me a letter stating what you have just stated, I will take the matter up and make it a matter of personal inquiry and get a letter to you from the Secretary which will, I am sure, straighten it out. I am sure that the Secretary is perfectly willing to make suggestions, and there is some misunderstanding.

Mr. JOHNSON of Washington. I addressed that letter to the Secretary of Labor, just as Mr. Campbell indicated earlier in these hearings. In my capacity as a Member of the House, I frequently address letters to the Commissioner of the Land Office, the Commissioner of Indian Affairs, and they are handled and answered in that name. Now, imagine my astonishment here toward the 1st of April, when these matters began to get acute as to the status of communists, communist labor people, and Russian workers, to find that my letters must be addressed not to the Commissioner General of Immigration, but to the Secretary of Labor.

Mr. POST. That has been so ever since I came there. It was instituted before I got here. It was instituted, I think, under the Department of Commerce and Labor, that all communications, departmental communications, all communications between the department and Congressmen must be through the Secretary. That was the rule when I came there. I did not know the reason for it and I do not know the reason now, but I know it is the rule. Now there is some misunderstanding, Mr. Johnson, about the Secretary saying he did not wish to make any suggestions. I am quite sure of that.

Mr. JOHNSON of Washington. I will put that letter into the record.

Mr. POST. Have you got a copy of the letter?

Mr. JOHNSON of Washington. Not now, but I will put it in the record at this point.

The letter referred to follows:

DEPARTMENT OF LABOR,
Washington, June 19, 1919.

HON. ALBERT JOHNSON, M. C.,

*Chairman Committee on Immigration and Naturalization,
House of Representatives, Washington, D. C.*

MY DEAR MR. JOHNSON: Supplementing the letter which I sent to you by messenger on June 11, I have to state that inasmuch as the immigration act of February 5, 1917, so far has been upon the statute books only during a period when conditions affecting immigration were altogether abnormal, for which reason there has not yet been any real opportunity to test the efficacy of the many provisions thereof which constitute new legislation upon the subject of immigration, which provisions, you will recall, were prepared by the Committees on Immigration of the House and Senate in the light of numerous suggestions offered by the executive officials who had been

administering the previous laws, the department is not prepared or disposed at this time to offer any affirmative suggestions with regard to amendment or extension of the immigration law, except those changes that have heretofore been presented to the committees in writing by the department.

Very truly, yours,

W. B. WILSON, *Secretary*.

Mr. POST. Now, I will tell you the immigration business is in my hands, as Assistant Secretary. It is an immigration matter, and if you will address a letter to me it is sure to reach me, and I can give it attention, and I will, and will take it to the Secretary himself and see that you get the Secretary's own response to that letter.

Mr. JOHNSON of Washington. Well, I did not mean to divert the inquiry.

The CHAIRMAN. I was particularly struck with a remark you made a moment ago, Mr. Post, in which you were explaining your political attitude—and I use the word "political" in the broad sense—that the Constitution of the United States does not seem to satisfy except in so far as it has an amending clause.

Mr. POST. No; I did not say that. I referred to the amending clause as being just as sacred—I will put it this way: The whole Constitution is to me a sacred document, and the amending clause is just as sacred as any other clause. That is my position about the Constitution.

The CHAIRMAN. Well, I think you gave the other impression.

Mr. POST. I may have done so, but it was inadvertent. It was because my mind was directed to the changing of the form of government. That comes under—

The CHAIRMAN (interposing). Are you now committed to a policy in your own mind of such a government as should grow out of the present Constitution of the United States?

Mr. POST. You mean a government—

The CHAIRMAN (interposing). In an orderly way.

Mr. POST. An organic change, you mean?

The CHAIRMAN. Yes.

Mr. POST. No; I am satisfied with the form of government, and well satisfied with the form of government as it exists, making it national instead of a mere federation of States. I am thoroughly well satisfied with that, but I have some very pronounced opinions as to some of the changes that ought to be made in the affairs of the country, pursuant to that constitution, including its amending clause and pursuant to the constitutions of the various States.

The CHAIRMAN. Those opinions might be interesting to pursue, but I want to get back to where we were before we had this interesting political talk.

Mr. POST. You understand my answer to that, that I am not satisfied to go on forever with the institutions that we have. For instance, the institution of taxation, which falls upon one class, and that the poorest class, but I have no scheme for reorganizing the Government.

The CHAIRMAN. And yet our institutions have lasted longer than any other institutions in the history of government.

Mr. POST. That depends upon what you mean by "institutions." We had the institution of slavery, Mr. Chairman, and it is gone.

The CHAIRMAN. The Government under the Constitution of the United States as created by the fathers has maintained a government under which we have lived and grown and prospered; given an asylum to every man who came here with a view of declaring allegiance to it and living under it; he and his children have prospered, and all that have been akin to him. There has been no such government in the history of mankind, and no government has lasted as long under the same constitution as this has.

Mr. Post. How long—just for my information—how long would you consider this Government had lasted under the same Constitution?

The CHAIRMAN. Since 1789.

Mr. Post. Since 1789. Then you include the amending clause as a part of it?

The CHAIRMAN. Yes.

Mr. Post. Certainly, but we had institutions in this country—we had the institution of slavery; we had the institution of a property qualification to vote, just the reverse of the soviet plan, the bolshevik plan, if our newspaper reports are true. Under the bolsheviks they disfranchise the rich who do not earn a living; under our old plan we disfranchised the workers unless they had property. Now we have changed that. We did not have the women vote; we are getting pretty close to having women vote; and so we have various institutions that under the amendment clause we have been getting rid of. There are some others that I think we could get rid of to advantage.

The CHAIRMAN. We will pass from that and get back to some of these cases here.

I think it was in the Truss case that you canceled the warrant, and as a partial reason—or I am not sure but what it was a sole reason—that Truss was not at that time a member of the Communist Party. Is that true?

Mr. Post. He was not a member of the Communist Party. That was my decision under the interpretation of the act and the principles of the decision laid down.

The CHAIRMAN. At the time that the warrant was issued?

Mr. Post. At the time.

The CHAIRMAN. Didn't the testimony show that he had been a member of the Communist Party?

Mr. Post. No; he joined the Communist Party—that is, he signed an application for membership before the Communist Party existed. Somebody in the Socialist Party was trying to organize the Communist Party and got him to sign an application for membership in June or July or August. That party did not exist until September. Of course a man can not belong to a proscribed organization before the organization exists. Now after the organization existed, at headquarters they sent on a charter which was never opened, never used, but the group that had gotten together at the request of this organizer had met a few times, three or four times, waiting for the constitution, and the constitution did not come. They were told that an organizer would be sent to explain the constitution. An organizer was not sent, and after meeting two or three times in September, early in October they disbanded and returned the charter. And my decision therefore—and I think it is a reasonable one—is that Mr. Truss never belonged to the proscribed Communist Party.

The CHAIRMAN. I got the impression that he had been a member of either the Communist Party or had merged into the party by natural process.

Mr. POST. He had not. He was not what they called an automatic member, for he did not belong to the Socialist Party, although he was a Socialist. He was not a member of the Communist Party, for his application antedated its existence. He did not become a member by his subsequent activities, because he was waiting to see the constitution, he and his friends, and it did not come, and no explanation came, and they disbanded and never had anything more to do with it. He never paid any dues, although he was credited with dues in the Communist Party, but those were dues—no, I don't think he was credited. I am not so sure of that, but whatever it was he paid, he had paid before the party existed.

The CHAIRMAN. Do you recall the case of the Italian Pietro Baldisseroto?

Mr. POST. Not by name.

Mr. JOHNSON of Washington. That was the fellow that committed suicide.

Mr. POST. Committed suicide? What do you mean?

Mr. JOHNSON of Washington. No, I beg pardon. That was not the one.

Mr. POST. That was Saledo. You mean the one in New York?

Mr. JOHNSON of Washington. Yes; that was Saledo.

The CHAIRMAN. I have a memorandum here which I will read.

Mr. POST. My memorandum?

The CHAIRMAN. No; it is a memorandum of the case.

Mr. POST. By whom?

The CHAIRMAN. That has been handed to me.

Mr. POST. Well, is it from the files?

The CHAIRMAN. It is one of the cases that have been—

Mr. POST (interposing). A memorandum of the Commissioner General?

The CHAIRMAN. I will read what I have here, and if you disagree with the record—

Mr. POST (interposing). No; I am through, Mr. Chairman. I am simply answering your questions.

The CHAIRMAN. This is the case of Franz Widmer.

Mr. POST. I don't recall it.

The CHAIRMAN. An Italian alien who was the leader of the Anarchist L, Renova group. Widmer admitted that he was an anarchist and had been for 20 years; that he had been the editor and publisher of an organ known as the publication for the Fourth Group of Anarchists, printed publications and circulars for the I. W. W., and did work of that kind. A publication bearing his print, the name of his print shop, or identifying his print shop, was found among the papers of the anarchist who was blown up at the home of the Attorney General here in the city when that anarchist attempted to blow up the house in which the Attorney General was living. Widmer's initials appeared on the paper.

He was also connected with publications that were advocating violence on the Pacific coast and out in the intermountain country. He advocated and was connected with the murder of Gov.

Steunenberg—or ex-Gov. Steunenberg—of Idaho, in 1906, and he referred to that murder in this way:

On our account we will add a little history, which by itself, and better than anything else, will justify the energetic act of the unknown rebel who consummated vengeance of the people on that hyena.

Then follows a history of the action of the governor, which consisted in using the troops in a strike. The article closes:

The last reports add that the executed hyena survived only 25 minutes to the attack with which the people's vengeance has so rightly hit him.

That is the history of the assassination.

Mr. POST. That is, you are vouching for this, Mr. Chairman?

The CHAIRMAN. I am giving now what is stated to have been in the article.

Mr. POST. Stated by whom?

The CHAIRMAN. Published by this.

Mr. POST. But who makes this statement?

Mr. JOHNSON of Washington. I make it. I am collecting this evidence.

Mr. POST. You are responsible for that statement?

Mr. JOHNSON of Washington. Yes.

Mr. POST. All right. You are responsible for that statement.

The CHAIRMAN. The article continues: "and those 25 minutes were too many." The article was signed "F. W." This man was an alien anarchist; admitted that he had been an anarchist for 20 years, and this was his record. You on the 13th day of April of this year canceled the warrant for his deportation.

Mr. POST. Did I write a memorandum?

The CHAIRMAN. There is no memorandum.

Mr. POST. Simply the word "canceled"?

The CHAIRMAN. Yes.

Mr. POST. Now, Mr. Chairman, I absolutely challenge that as a false statement. I made my memorandum on the evidence. If there is anyone here that wants to make the accusation that I decided in such a case to cancel the warrant let him produce the evidence and not that statement. I did not make my decision on Mr. Johnson's memorandum, and I would not make my decision on Mr. Johnson's memorandum, or anybody else's in that way. I decided that case on the evidence, which you do not produce before this committee.

Mr. JOHNSON of Washington. But, if you will permit me, as soon as Mr. Post is at liberty before this committee, we have asked that he come before the Immigration Committee, and he has agreed that he will come, and we are going to ask him to bring the papers in these cases.

Mr. POST. Yes; and I shall be willing to do it, and you are rather late in extending me the invitation, Mr. Johnson.

Mr. JOHNSON of Washington. Well, we have given you time——

Mr. POST (interposing). No——

Mr. JOHNSON of Washington (interposing). We have given you time to empty the jails as far as you could.

Mr. POST. I did not need the time——

Mr. JOHNSON of Washington (interposing). It took a long time to get the decision in the Russian workers' case, I mean.

Mr. POST. A long time to get the decision in that?

Mr. JOHNSON of Washington. In the communist labor cases.

Mr. POST. A long time to get what decision?

Mr. JOHNSON of Washington. To get the Secretary of Labor's decision.

Mr. POST. Do you know why that was?

Mr. JOHNSON of Washington. I am anxious to know.

Mr. POST. I will tell you why. I thought I explained it yesterday. I would not decide the Communist Labor Party case. That was a matter of policy for the department, for the Secretary himself to decide. He had decided the Communist Party case in January. I told you that this morning—put it on the record here—he had decided the Communist Party case in January, and he said then that he was inclined to believe that there was a difference between the two parties, and a vital difference, and that he would have a hearing on the Communist Labor Party case before there should be deportations there, and so I suspended deportations during his absence. You know that the Secretary was engaged on a very important piece of work for the President; you know also that he was away on account of his own health, which was broken down, and from which he is just recovering; you know that his wife was an invalid; you know that his old mother was dying and he went and spent the time with her before she died, and there was the occasion for the delay—pardon me, sir—there was an occasion for the delay, and when he got back I brought those cases to his attention and he had the hearing and made the decision.

Mr. JOHNSON of Washington. Yes; but I want you to understand that, knowing those things, the Committee on Immigration deliberately and with the understanding of its members, by vote and resolution, as a matter of record, ceased asking for reports of cases from the Department of Labor during the months of February and part of March.

Mr. POST. I was not talking about that period when I spoke of your being late in calling for my examination; I was speaking of the time when you came into my office last summer or last fall—I have forgotten which it was—and when you said we were going to have a hearing, and when you rummaged through and got the papers. Nobody objected to that; what was objected to was when members of your committee got papers from the commissioner general and the commissioner general's office sent for those papers and they were told if they wanted them to come and get them. That is when I put the kibosh on their going in and getting papers without leave from the department. Now, during all that time—

Mr. JOHNSON of Washington (interposing). There were no such papers sent from the commissioner general's office, except those he brought with him and took back with him.

Mr. POST. I only know that when I went to get the files I was told they were in the hands of the Committee on Immigration.

Mr. JOHNSON of Washington. They were not.

Mr. POST. Or some Congressman there—a Member—and when I asked them to get them they were told if they wanted the papers to come and get them. Then I took the ground that I did.

The CHAIRMAN. You recall the decision of the Secretary of Labor in the Communist Labor Party case made a few days ago?

Mr. Post. I put it in the file this morning—I mean I put it in the record this morning.

The CHAIRMAN. Do you agree with the decision in that case?

Mr. Post. I do; and with the decision in the other case also.

The CHAIRMAN. Did you participate in it or collaborate with the Secretary in that decision?

Mr. Post. No more than I do in anything where the Secretary calls me in and confers with me. I sat in the case and heard the argument.

The CHAIRMAN. Now as bearing on your frame of mind toward the law and toward alien enemies and their deportation, or giving them an opportunity to remain in the United States, I call your attention again to your definition, or to your enlargement of the word "anarchist" in the Magoon case, and now call your attention to the decision in the labor party case, merging, or giving an opportunity to communists to become labor party adherents.

Mr. VAILE. Communist Labor Party.

The CHAIRMAN. Communist Labor Party.

Mr. Post. I don't know what the point of the question is.

The CHAIRMAN. Now. I want to call your attention to what has been said in the New York World about the Communist Labor Party in a recent article dated May 1. This was written before and appeared in the New York World before the decision in the Communist Labor Party case was rendered.

Article under the caption "Communist Unity Imperative" is as follows:

Lately a dispatch made the rounds of the daily press according to which the Letts are reported to have captured a courier from Russia carrying letters to the American Communist Parties, advising them to unite. A detailed report of the contents of these letters, printed in the New York World of March 29, leaves very little doubt that the letters are genuine. Though they have been edited by the reporter, they in substance give a clear résumé of the conditions.

"The concentration of American bourgeois forces," the document relating to the question of unity reads, "has increased to an unprecedented extent, and the struggle demands unprecedented sacrifices. The split is not caused by any profound differences of opinion as regards the program. At bottom are but certain disagreements as to tactics, principally questions of organization. Under such circumstances the split has not the slightest justification and should be liquidated at once."

"In so far as both parties stand on the platform of the Communist International—and of this we have not the slightest doubt—a united party is not only possible but absolutely necessary, and the executive committee insists on this being immediately brought about."

As a basis for unity, the report continues, the Communist International and the orders of its executive committee should be taken. These orders, together with the fundamental principle of the Third International, are summed up in the following nine points:

1. The Communists should strive to unite all elements which recognize the seizure of power by the working class through workers' councils, and the establishment of a proletarian dictatorship.

2. There should be a complete break with the old Socialist parties, though individual members of these parties should be accepted as members of the Communist organization.

3. The state of verbal propaganda has passed and the time for decisive battles has arrived. Revolutionary mass action must be organized as a first essential.

4. Cooperating to hasten the process of dissolution of all craft unions, the party must strive to establish the closest connection with the one big union movement. Supporting the industrial unions in their every-day strikes for direct demands, the party should strive to deepen and widen the struggle and convert it into a struggle for final revolutionary aims.

5. Supporting the formation of factory committees, which are to serve as the nucleus for Soviet management when the revolution is achieved.

6. The chief function of the so-called national (foreign) federations is to prepare foreign workers to take places in the English-speaking Communist movement. Though the sudden and complete break-up of these federations is undesirable, they must be subjected to their real purpose.

7. During the revolution the absolute control over the affairs must be secured for the working class by an unlimited dictatorship of the proletariat.

8. Establish large newspapers that will give real news from a communist viewpoint.

9. Establish underground organizations, even though it may be possible to function legally, for the purpose to carry on direct revolutionary propaganda among the masses.

Mr. RALSTON. Mr. Chairman, may I ask what evidence of authenticity there is in those papers which have been handed to you?

The CHAIRMAN. This refers to two articles published in the New York World on the 29th of April and one on the 1st of May, telling of the action in the communist movement generally, uniting the Communist Labor Party and the Communist Party, which preceded the decision in the Communist Labor Party case two or three days.

Mr. RALSTON. The point I have in mind is, is there the slightest evidence that those documents which you have read are authentic or that you have not been imposed upon?

The CHAIRMAN. I am now going to ask Mr. Post if he has any knowledge or any information of any movement on the part of the communists to unite.

Mr. RALSTON. I think you will have to ask an entirely hypothetical question, if there is no evidence to show that those documents are genuine.

The CHAIRMAN. I have made this the basis of the question—based upon the decision in the labor case.

Mr. RALSTON. There is, as you know, Mr. Chairman, a very great deal of literature which has been circulated in this country, even to the day preceding the 1st of May, which was not at all authentic, as the facts have shown. Whether that is authentic or not I do not know, of course.

The CHAIRMAN. If this is true, it has a very important bearing.

Mr. POST. On what, Mr. Chairman?

The CHAIRMAN. On the administration of the law.

Mr. POST. You mean on the Secretary's decision in the Communist Labor Party case?

The CHAIRMAN. Yes.

Mr. POST. I submit that it hasn't the slightest bearing upon that decision, and I think you will agree with that if you know what the decision is.

The CHAIRMAN. If all communists from this on are to be known as Communist Labor Party adherents—which is not the name in the statute of 1918, and which has been declared by the Secretary of Labor in his decision of May 3 not to be a deportable offense—it would give an asylum to every communist.

Mr. POST. What is not a deportable offense?

The CHAIRMAN. To be a member of the Communist Labor Party.

Mr. POST. If what you have read is authentic, the persons who are responsible for it can be deported, I take it—I was not able to follow it very clearly. But this is the point about membership, which I think you are losing sight of: The point of membership is not a question of what any organization's officers or committees or conventions may do collaterally; the question of membership turns upon the

organic law of the organization. You can not hold men to deportation or penalization of any kind for belonging to an organization which is lawful in its organic laws, the constitution of which is lawful. When a man joins an organization—I am only stating my own views as to this now; I am not speaking for the Secretary—when a man joins any organization he is bound to know the organic law of that organization, and he is not bound to know the activities of the members of the organization unless he is shown to be cognizant of them or to have participated in them. What the Secretary has decided is that the organic law of the Communist Party and the pledge it requires of its members, who must sign it, bring that member within this act of Congress; that the organic law and the pledge of the Communist Labor Party does not bring this organization within the act of Congress. Now, the Secretary was the man to decide that, not the editor of the World. The Secretary has decided that, and he has given his reasons, which I do not think you have read, Mr. Chairman, yet, but they are on the record here.

The CHAIRMAN. Well, let me ask, if the Communist Labor Party adheres to the principles that I have just read, is it consistent with the law of 1918 to refuse to deport the alien enemy who is a member of that party?

Mr. POST. Your "if" destroys your question. The Communist Labor Party on its own platform; its organic law and its pledge of membership—application for membership—does not come within the law as now drawn.

The CHAIRMAN. But this states that it does.

Mr. POST. What is that?

The CHAIRMAN. Well, it is, as I said, an article in the New York World.

Mr. POST. The New York World can not control the Secretary of Labor.

The CHAIRMAN. Reciting what had been done at the meeting, and giving its authorities.

Mr. POST. Now let me bring this right to the point, that whatever consideration may be involved in that article of the World is a consideration that is addressed to Congress and not to the officer who is charged with executing an existing law; and my point is that the law as it exists—the point I am trying to bring to your attention is that the law as it exists, or under the law as it exists, the Communist Party comes within its proscription, because its organic law and its pledge of membership, with which every member must be presumed to be acquainted, is contrary to that law; that the Communist Labor Party's organic law and its pledge of membership does not bring the member within that law, and if what you are putting forward there has any basis in reality, if there is anything to be considered it is for Congress to consider it and amend the law so as to bring that party within the law.

The CHAIRMAN. Couldn't the Secretary, or you, if you were passing upon this matter for the benefit of the Government rather than for the benefit of the alien, read into the statute, or enlarge upon the statute, in an opinion, as was done by Justice Brewer in the Church case, for the protection of the Government against men who believe

in the things that I have just read here—and I am just handed a memorandum saying that the item——

Mr. POST (interposing). Before you go to another question, Mr. Chairman——

The CHAIRMAN (interposing). I am informed that these doctrines that I have just read, as being the doctrines to which the Communist Labor Party adheres, come from the Communist Labor, the official organ of the party.

Mr. POST. That can hardly bind a man who is a member and who doesn't even know—you don't realize that in the vast majority of these cases the individual, even in cases where I have had to hold him as a member—the individual has not known that he was in an unlawful organization; he has joined it to go to school or to come into a social club of members of his own nationality and his own speech; he was in the vast majority of cases a man who denied that he believed in physical force; denied that he believed in overthrowing the Government; denied that he knew that this party was an unlawful party, or one teaching violence, and there was no proof that he did know it. Now, the question is not a question of whether we shall deport men who believe in that sort of thing; it is a question of whether we shall deport men who do not believe in that sort of thing but would have been caught up in a membership the character of which they did not understand. That is the question that comes up here.

This is not a proposition for deporting men of violence and anarchists, etc., it is a proposition for deporting members, whether they know what their organization is or not; and the line which the Secretary has drawn is between the organic law of the organization, which they are bound to know—or presumed to know, whether they do or not—and actions outside of the organic law collateral to it.

Mr. JOHNSON of Washington. Did the Secretary take into account the fact that all of these organizations—the Russian Workers, Communists, and Communist Labor Parties—all hang everything they have got to the Third International?

Mr. POST. You can read the Secretary's decision.

Mr. JOHNSON of Washington. I notice that he carefully left out of his quotation of the Communist Labor platform and principles their statement that they are socialists, agreed to the accomplishment of these things by violence that never were accomplished by the ballot.

Mr. POST. There is nothing in the organic law of the Communist Labor Party, as I remember reading it, that has been left out of the decision.

Mr. JOHNSON of Washington. I think there is a whole sheet left out.

Mr. POST. There is a whole sheet of irrelevant stuff left out, of things that would not bind the members.

Mr. JOHNSON of Washington. This organic law is a new thing. Here are four or five paragraphs that you call organic law, and then here is a whole sheet of organic principles and propaganda, and they all hang on this third international, which stands for force and violence, arms against arms.

Mr. POST. There is nothing in the organic law that calls for that. The principles—if I remember the decision, the principles are adopted; the tactics are not.

Mr. JOHNSON of Washington. Now then doesn't the Communist Labor Party in its organic act adopt the principles of the third international?

Mr. POST. Not to tactics. The tactics is where the force comes in. The principle is a different thing.

Mr. JOHNSON of Washington. Aren't they just adopting a mere subterfuge by saying they will postpone temporarily the force and violence, and use the word "political," and then in the next breath say that these things are not accomplished by the ballot?

Mr. POST. I don't know what the leaders had in the back of their heads, and I don't think that a man who joined, not knowing what the leaders had in the back of their heads, should be held responsible as a member for what they had in the back of their heads. Now, Mr. Johnson, if your purpose—

Mr. JOHNSON of Washington (interposing). Let me ask you one question: Don't you think that the red wings of the Socialist Party, that have dropped off from time to time, that direct-action wings have known what they were doing?

Mr. POST. The mere member may or may not have known; and these men, the vast majority of them, are being deported for being mere members without any knowledge of what was going on.

Mr. JOHNSON of Washington. I will ask you another question now: Do you think that the Russian workers' organization is anarchistic and uses force and violence?

Mr. POST. The Secretary of Labor has so decided, and so far as I know it is true. I was not engaged in the immigration work at the time that was passed, and so I don't know what the discussion was. I was not in at the discussion, but I have under that decision of the Secretary deported mere members of the Russian organization.

Mr. JOHNSON of Washington. How many?

Mr. POST. I don't know.

Mr. JOHNSON of Washington. Very few.

Mr. POST. Every one that was proved to be a member.

Mr. JOHNSON of Washington. Do you think the membership in the I. W. W. knows that they want to use force and violence?

Mr. POST. The Secretary decided that mere membership in the I. W. W. does not bring the member within the law, because the organic law of the I. W. W. is not contrary to the law; that the activities of officers, directors who get in control—that they are in many instances against the law, and that if any member is shown to be cognizant of what they are doing, to participate in it, to know it or to help it, he will be deported, but that a man—

Mr. JOHNSON of Washington (interposing). All right, now—

Mr. POST (interposing). I beg pardon—that a man who is a mere member and there is no proof of his personal knowledge, no proof of personal guilt of any kind, is not to be deported for being a mere member of an organization, the organic law of which is lawful.

Mr. JOHNSON of Washington. Now, then, following that out, do you think that any inspector, investigator, or agent of the Immigration Service can go out and find any evidence on which to convict an alien member of the I. W. W. or any one of these other revolutionary organizations of any overt act?

Mr. POST. I don't know whether he can or not.

Mr. JOHNSON of Washington. Very doubtful, isn't it?

Mr. POST. I don't know. But it makes no difference; I don't think that we ought to deport men under the law of 1918 and 1917 unless we have found that they have acted contrary to that law.

Now, if your object is merely to get alien scalps to hang to the belt, then your question is pertinent enough; but if your object is to deport the men who come within the provision of the law, then under our decision, backed by that decision I read this morning, we must know that they are guilty under the law. If you want innocent men under the law deported, your question is pertinent; otherwise I submit it is not.

Mr. JOHNSON of Washington. Not innocent men, but revolutionists.

Mr. POST. Well, a revolutionist is a guilty man under this law. Prove he is a revolutionist and he will be deported.

Mr. JOHNSON of Washington. I will prove you half a dozen here that you have failed to deport.

Mr. POST. Not one.

Mr. JOHNSON of Washington. I will.

Mr. GARRETT. Mr. Post, there was one expression that you used in response to an inquiry by Mr. Pou that attracted my attention, and that was when you were discussing the policy and expressing yourself as an individual with reference to the proper legislation on this subject of deportation, alien deportation, in which I think you said that you would favor, within the limits that you defined, making as drastic a law as might properly be made, and you mentioned "overt act." Now, may I ask if you were finding a law, would you regard membership in the Communist Party itself an overt act?

Mr. POST. I? Yes; if the membership were proved; not if it were not proved.

Mr. GARRETT. Well, I asked if it were proved.

Mr. POST. If, knowing membership—that is to say, if a man had joined the party knowing that he was joining that party; had signed its application blank and had acted after that as a member of the party in any way, so that he could be held to be knowingly a member of the party.

Mr. GARRETT. By "overt act" then you do not mean that you require that a bomb be thrown, for example?

Mr. POST. No; no lawyer ever in the world would claim that it means that. What I mean is to get away from the mere expression of a thought. I thought I illustrated that when I said that there are some very reputable men, a judge of the Federal court, for instance, is reported as having made a speech in Minnesota in which he said that members of the nonpartisan league up there, farmers, ought to be put up against a barn and shot. Well, now, I don't believe that Judge Landis ever meant that, if he said it. I don't know whether he said it, but it was widely reported that he did, and if he did say it, I don't believe for one instant that he meant it. Now, suppose we had a law that would cover such a thing, should Judge Landis be penalized because he used that expression in the heat of a speech? He should be proved to have done something to show that when he used that expression he meant that expression. What he does need not go to the extent of actually putting the loaded gun to the man's head; it must be something that leads in that direction.

Now, the Communist Party is a party within this provision, and I think that the law is perfectly right in making members of that

party subject to deportation; but when the question comes up, is the man a member, I think it should be shown that he is knowingly a member; I do not think—I think we have gone even further than we ought to in charging with membership men who do not know they are members. But at any rate he must know he is a member, and if you charge him with being a revolutionist and a forcible revolutionist, and as your proof showed that he was a member of a physical force revolutionary body, I would consider that that was an overt act, if he knew he was a member of it. I would consider anything that showed a deliberate step, an intentional step in the direction of what his offhand exclamation might indicate. In other words, I don't want to see men penalized at all because they get mad and say something that they don't mean; there ought to be an overt act, and that is what I think the Constitution meant when it provided that you can not punish for treason unless there is an overt act.

Mr. GARRETT. Where does the department get these organic laws?

Mr. POST. They are procured. They come into the evidence. I suppose they were gotten by the secret-service agents of the Department of Justice. They may have been gotten by some of our men. I don't know.

Mr. GARRETT. Of course, it is useless to ask whether or not they consider them authentic?

Mr. POST. Yes; they are proved. They have been proved.

Mr. GARRETT. Now, is there anything except just the organic law itself? Are there any collateral papers taken into consideration, or is there any way that these organizations would have of putting out an organic law that would not bring it within the provisions of the deportation act, but yet would have other obligations, verbal or equally as sacred, that would bring them within the act? Are there any evidences in your experiences of any evasion of that kind?

Mr. POST. No; there is no evidence of any evasion. On the contrary, so far as I have seen, the great majority of these people are simple-minded, hard-working men, who have joined an organization that they thought was legitimate, and did not know it was illegitimate until they got arrested in the raids.

But let me see if I can get the answer directly to your question. Take an organization—let us take the Communist Labor Party, for instance. It puts out, as you suggested might be done—and as I concede might be done—an innocent organic law and an innocent application for membership; and then having gotten its membership, its officers, directors, goes to work undermining the Government or directing underground or overground measures for attacking the Government by force and violence, puts editorials into its organ, for instance, or sends circulars or something of that kind. Now, where will the line be drawn? A member of that organization can be deported simply for membership. A man who does those things that are against the law can be deported for doing those things.

Mr. GARRETT. Certainly.

Mr. POST. Now my idea would be that the man who is a mere member shall not be deported under those circumstances where the organic law is lawful, even though it is a trick. He is not in the trick, and unless he can be shown to be in the trick he should not be deported. If the organic law is lawful and he is a member, and he is

governed by the organic law, which of course you recognize, he must be presumed to know that—every member must know that; if he has engaged as officer or member in these collateral matters, declarations that are unlawful, agitations that are unlawful, then he should be deported for having done that, but not as a mere member; and there is where the line runs between deporting an innocent man who is a member of an organization that has got him into it by an innocent organic act, and who never knows and never takes any part—doesn't even know of the unlawful acts that its officers do. If he participates, then there is a charge against him and he should be deported, but the mere innocent member who is guilty of nothing but joining an organization that on the face of it, its organic law is lawful, I don't think that any man with an American mind would wish to have that kind of a man deported without some evidence showing that he was culpable with reference to the unlawful actions and the unauthorized actions of that organization—unauthorized by its organic law.

The CHAIRMAN. Whatever else we have done to-day, Mr. Secretary, I think we have violated the 8-hour law, and I am very jealous of law violations.

Mr. Post. No; we are still within the law, Mr. Chairman. We have been here only 7 hours, less the time we took for luncheon. I want to express my appreciation, Mr. Chairman, for the courtesy I have received since I have been here.

(Whereupon, at 5.05 o'clock p. m., the committee adjourned.)

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